

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Jones Potato Chip Co,) PACA Docket No. D-20-J-0117
)
Respondent) **Amended Consent Decision and Order**

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (PACA). The Complaint filed herein, on April 21, 2020, alleged that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA by failing to make full payment promptly.

The Complaint sought the issuance of a decision finding that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA, and ordering that Respondent's PACA license be revoked (or suspended) pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)). In cases where alleged PACA debt in a Complaint has been paid in full, rendering the case one of "slow-pay", as here, the appropriate sanction is suspension. *In re Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 547-549 (1998)

The Complaint was served upon Respondent, and Respondent agrees that the Secretary has jurisdiction in this matter and waives all further proceedings in this matter. Respondent further waives all rights to seek judicial review and otherwise challenge or contest the validity of this decision, including waiving challenges to the Administrative Law Judge's authority to enter this Decision and Order under the Administrative Procedure Act and the Constitution of the United States, and waives any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 *et seq.*) for fees and other expenses incurred by Respondent in connection with this proceeding or any action against any USDA

employee in their individual capacity.

The parties agree that the Secretary has jurisdiction to issue an order in this proceeding, and agree to the entry of a Consent Decision and Order. Accordingly, on August 18, 2020, a Consent Decision and Order was entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*)(Rules of Practice) applicable to this proceeding (7 C.F.R. §1.138). The parties, in the Consent Decision and Order entered on August 18, 2020, inadvertently omitted that a finding of flagrant and repeated violations would be made *and* a suspension would be ordered (**and both would be held in abeyance pending satisfaction of certain terms**). Therefore, this Amended Consent Decision and Order is offered as a substitute and replacement filing to achieve that purpose.

Findings of Fact

1. Respondent is a corporation organized and existing under the laws of the State of Ohio. Respondent's business and mailing address is 823 Bowman Street, Mansfield, Ohio 44903.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 2011 0707 was issued to Respondent on March 31, 2011. The license is currently active due to be renewed on March 31, 2021.
3. Respondent, during the period November 2018 through March 2019, in the transactions set forth in Appendix A to the Complaint and incorporated by reference, failed to make full payment promptly to four sellers for sixty-six (66) lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate commerce, in the total amount of \$438,673.32. All sellers listed in the Complaint have

been paid in full.

Conclusions

Respondent's failure to make full payment promptly to 4 sellers of the agreed purchase prices of the perishable agricultural commodities described in the Findings of Fact above constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

A finding is made that Respondent has committed repeated and flagrant violations of section 2(4) of the PACA (7 U.S.C. §499b(4)), and Respondent's PACA license shall be suspended for a period of 30 days pursuant to section 8 of the PACA (7 U.S.C. §499h).

However, that finding and license suspension is held in abeyance so long as Respondent pays a civil penalty of \$5,000.00 immediately upon issuance of this Consent Decision and Order. Payment of the civil penalty shall be made by certified check or bank check made payable to the "United States Treasury" and delivered to the United States Department of Agriculture, Agricultural Marketing Service, PACA Division, 1400 Independence Avenue, S.W. Room 1510 South Bldg., Washington, D.C. 20250. Respondent has, as of the date of this Amended Consent and Order, sent the civil penalty in proper form and amount to Complainant, and the civil penalty check has been properly applied. With proper payment of the above-mentioned civil penalty, Respondent's obligation in settlement of this case is completed, and the above finding and suspension will be permanently abated and the case will be closed.

This Order shall become final and effective upon issuance. Copies hereof shall be served upon the parties.

CHRISTOPHER YOUNG Digitally signed by CHRISTOPHER YOUNG Date: 2020.09.08 13:28:43 -04:00'

Christopher Young, Esq.
Attorney for Complainant

9/8/20
Date signed



Robert G. Jones
For Respondent

9-9-20
Date signed

President
Jones Potato Chip Co.

Done at Washington, D.C.

this 11 day of September, 2020



Administrative Law Judge