

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-04-0022
)	
Produce Diversified Services, Inc.)	
)	Decision and Order
Respondent)	By Reason of Default

Procedural History

[1] This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (hereinafter frequently “the Act” or “the PACA”), instituted by a Complaint filed on September 15, 2004.

[2] The Complainant is the Administrator, Perishable Agricultural Commodities Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (hereinafter frequently “AMS”).

[3] On September 15, 2004, the Hearing Clerk sent to Respondent Produce Diversified Services, Inc. (hereinafter frequently “Respondent Produce Diversified” or “Respondent”), by certified mail, return receipt requested, to its business mailing address, a copy of the Complaint and a copy of the Rules of Practice, together with a cover letter (service letter). Respondent was informed in the service letter, among other things, that it had 20 days from receipt to file its answer.

[4] Respondent Produce Diversified received the Complaint, Rules of Practice, and service letter on September 20, 2004, and did not answer the Complaint. The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the Complaint. 7 C.F.R. §1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139.

[5] Accordingly, the material allegations of the Complaint, which are admitted by Respondent's default, are adopted and set forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139. *See* 7 C.F.R. §1.130 et seq.

[6] AMS filed a Motion for a Decision Without Hearing by Reason of Default on April 22, 2005. Respondent Produce Diversified received a copy of the Motion April 26, 2005, and did not respond to the Motion.

Findings of Fact

[7] Respondent Produce Diversified Services, Inc. is a corporation organized and existing under the laws of the State of Minnesota, with a business mailing address of 1329 Pinehurst Avenue, St. Paul, Minnesota 55116.

[8] At all times material herein, Respondent Produce Diversified was licensed under the provisions of the PACA. PACA license number 20000201 was issued to Respondent on November 9, 1999. That license terminated on November 9, 2002 pursuant to Section 4(a) of

the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required license renewal fee.

[9] Respondent Produce Diversified Services, Inc. failed to make full payment promptly to 13 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$152,120.30, for 66 lots of fruits and vegetables, all being perishable agricultural commodities, which it purchased, received, and accepted in interstate and foreign commerce during February 2002 through October 2002.

Conclusions

[10] The Secretary of Agriculture has jurisdiction.

[11] Respondent Produce Diversified Services, Inc. willfully, flagrantly and repeatedly violated Section 2(4) of the Perishable Agricultural Commodities Act (7 U.S.C. § 499b(4)) during February 2002 through October 2002.

Order

[12] Respondent Produce Diversified Services, Inc. committed willful, flagrant and repeated violations of Section 2(4) of the Perishable Agricultural Commodities Act (the PACA) (7 U.S.C. § 499b(4)) during February 2002 through October 2002, and the facts and circumstances of the violations shall be published.

[13] This Decision and Order shall have the same force and effect as if entered after a full hearing and shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 31st day of May 2005

Jill S. Clifton
Administrative Law Judge

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