

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

PACA Docket No. D-03-0021

In re:

Wooten Farms, Inc., d/b/a Carolina
Brokerage Co., a/t/a Vista Produce Co.,

Respondent

DECISION WITHOUT HEARING

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) hereinafter referred to as the “Act”, instituted by a Complaint filed on May 16, 2003, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleges that during the period March 1993 through July 2001 Respondent purchased, received, and accepted, in interstate and foreign commerce, from 19 sellers, 116 lots of perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$281,446.93.

A copy of the Complaint was served upon Respondent; Respondent submitted an answer in which it generally denied the allegations of the Complaint pertaining to its failure to make payment promptly. On August 25, 2004 a follow up investigation was conducted by the PACA

Branch of the Agricultural Marketing Service which revealed that as of August 25, 2004, 18 of the 19 sellers listed in the Complaint were still owed \$279,425.08. Based on the results of the investigation, Complainant filed a Motion for an Order Requiring Respondent to Show Cause Why a Decision Without Hearing Should Not Be Issued; Respondent did not answer the Motion. Hearing no objection, the Administrative Law Judge issued a Notice To Show Cause Why A Decision Without Hearing Should Not Be Issued, based upon Complainant's allegation in its Motion, substantiated by affidavit, that Respondent failed to pay the produce debt alleged in the Complaint within 120 days of the service of the Complaint.

Under the sanction policy enunciated by the Judicial Officer in In re Scamcorp, Inc., d/b/a Goodness Greeness, 57 Agric. Dec. 527, 547 (1998),

“PACA requires *full payment promptly*, and commission merchants, dealers and brokers are required to be in compliance with the payment provisions of the PACA at all times....In any PACA disciplinary proceeding in which it is shown that a [R]espondent has failed to pay in accordance with the PACA and is not in full compliance with the PACA within 120 days after the [C]omplaint is served on that [R]espondent, or the date of the hearing, whichever occurs first, the PACA case will be treated as a “no-pay” case.... In any “no-pay” case in which the violations are flagrant or repeated, the license of a PACA licensee, shown to have violated the payment provisions of the PACA, will be revoked.” Id. at 548-549.

According to the Judicial Officer's policy set forth in Scamcorp, in this case, Respondent had 120 days from the date the complaint was served upon it, or until October 24, 2003, to come into full compliance with the PACA. Therefore, as Respondent was not in full compliance by that date, this case should be treated as a “no pay” case for purposes of sanction, which warrants

the issuance of a Decision Without Hearing finding that Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA and ordering that Respondent's violations be published.

As Respondent has failed to Show Cause Why a Decision Without Hearing Should Not Be Issued, the following Decision and Order is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent is a corporation organized and existing under the laws of the state of South Carolina. Its mailing address is 1001 Bluff Road, South Carolina State Farmers Market, Columbia, South Carolina 29201.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. Pursuant to the licensing provisions of the Act, license number 901840 was issued to Respondent on September 4, 1990. This license terminated on September 4, 2001, when Respondent failed to pay the required annual fee.

3. As more fully set forth in paragraph III of the Complaint, during the period March 1993 through July 2001, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 19 sellers, 116 lots of fruits and vegetables, all being perishable agricultural commodities, and failed to make full payment promptly of the agreed purchase prices, in the total amount of \$281,446.93.

4. Respondent failed to pay the produce debt described above and to come into full compliance with the PACA within 120 days of the filing of the Complaint against it.

Conclusions

Respondent's failure to make full payment promptly with respect to the 116 transactions

set forth in Finding of Fact No. 3, above, constitutes willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b), for which the Order below is issued.

Order

A finding is made that Respondent has committed willful, flagrant and repeated violations of Section 2 of the Act (7 U.S.C. § 499b), and the violations of Respondent shall be published.

This order shall take effect on the 11th day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Copies hereof shall be served upon parties.

Done at Washington, D.C.
this 28th day of February, 2005

PETER M. DAVENPORT
Administrative Law Judge

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