

**PERISHABLE AGRICULTURAL COMMODITIES ACT**

**DEFAULT DECISIONS**

**In re: STATE PRODUCE BROKERS, INC.**

**PACA Docket No. D-00-0016.**

**Decision and Order filed October 18, 2000.**

**PACA - Default - Full payment, failure to make, when due - Bankruptcy creditors.**

Mary Hobbie, for Complainant

R. Jason Read, Newport Beach, CA, for Respondent

*Decision and Order issued by James W. Hunt, Administrative Law Judge.*

**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 June 7, 2000, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture.

The Complaint alleges that during the period May 1999, through July 1999, Respondent State Produce Brokers, Inc., (hereinafter "Respondent") failed to make full payment promptly to 3 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$328,794.22 for 68 lots of perishable agricultural commodities, which it purchased, received and accepted in interstate commerce. The Complaint also noted that on July 14, 1999, Respondent filed a voluntary petition in the United States Bankruptcy Court for the Central District of California pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. ' 1100 *et seq.*). This petition was converted to a Chapter 7 Petition for Bankruptcy on October 15, 1999, pursuant to Bankruptcy Code (7 U.S.C. ' 700 *et seq.*) and designated Case No. LA-99-36391-EC. Complainant requested that a finding be made that Respondent committed willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. ' 499(4)), and that such findings be published.

Respondent has admitted in documents filed in connection with its Chapter 7 bankruptcy proceeding entitled Scheduled F - Creditors Holding Unsecured Nonpriority Claims that it owes all of the 3 sellers listed in Paragraph III of the Complaint \$462,347.31. The Complaint alleged debt to those same 3 sellers of \$328,794.22. This admission warrants the immediate issuance of a Decision without Hearing by Reason of Admissions. Complainant has filed a Motion for the issuance of a Decision without a Hearing by Reason of Admissions, and the following Decision is issued without further investigation or hearing pursuant to Section 1.139 of the Rules of Practices (7 C.F.R. 1.139).

**Finding of Fact**

1. Respondent is a corporation whose business address was P.O. Box 2399, Bell Gardens, California

90201.

2. Pursuant to the licensing provisions of the PACA, license number 671960 was issued to Respondent on May 3, 1967. This license terminated on May 3, 2000, pursuant to Section 4(a) of the PACA (7 U.S.C. ' 499(a)), when Respondent failed to pay the required annual renewal fee.

3. The Secretary has jurisdiction over Respondent and the subject matter involved herein.

4. Respondent, during the period May 1999 through July 1999, on or about the dates and in the transactions set forth in paragraph III of the Complaint, purchased, received and accepted 68 lots of perishable agricultural commodities with agreed purchase prices in the total of \$328,794.22 from 3 sellers in interstate commerce.

5. On July 14, 1999, Respondent filed a Voluntary Petition pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. ' 1100 *et seq.*) in the United States Bankruptcy Court for the Central District of California. This petition was converted to a Chapter 7 Petition for Bankruptcy on October 15, 1999, pursuant to Bankruptcy Code (7 U.S.C. ' 700 *et seq.*) and designated Case No. LA-99-36391-EC.

6. Respondent admitted in bankruptcy pleadings that it owed an amount that totals \$462,347.31, an amount greater than that which the Complaint alleged, to the same 3 sellers that are alleged to be unpaid for the purchases in the Complaint. Schedule F consists of a table reflecting the name and address of the creditor and the amount of the unpaid produce debt as shown in the Complaint and in Respondent's bankruptcy filing.

SELLER'S NAME & ORIGIN	BANKRUPTCY PLEADING	COMPLAINT
Blakal Packing, Inc. Quincy, WA	\$ 31,362.50	\$ 36,854.90
L & M Produce Inc. Merirll, OR	\$ 3,272.50	\$ 3,272.50
Jones Produce, Inc. Quincy, WA	\$427,712.31	\$288,666.82
	Total Amount: \$462,347.31	Total Amount \$328,794.22

### Conclusions

Respondent has admitted in the petition and schedules that were filed in its bankruptcy proceeding that it still owed 3 sellers at least \$462,347.31 for 68 lots of perishable agricultural commodities on July 14, 1999. However, a follow-up investigation conducted on August 28, 2000, through August 29, 2000, by Lisa Velez, a Marketing Specialist with the PACA Branch, showed that 1 seller was paid in full and partial payments were

made to the other 2 sellers under the PACA trust, leaving a balance of \$26,288.55 (see following table).

SELLER'S NAME & ORIGIN	BANK-RUPTCY PLEADING	COMPLAINT	AMT PAID UNDER TRUST	UNPAID BALANCE
Blakal Packing, Inc. Quincy, WA	\$ 31,362.50	\$ 36,854.90	\$ 11,162.63	\$ 25,692.27
L & M Produce Inc. Merirll, OR	\$ 3,272.50	\$ 3,272.50	\$ 2,681.22	\$ 591.28
Jones Produce, Inc. Quincy, WA	\$427,712.31	\$288,666.82	\$288,666.82	\$ 0
	Total <sup>1</sup> Amount: \$62,3472.31	Total Amount \$328,794.22	Total Amount \$302,510.67	Total Amount \$ 26,288.55

Respondent's admitted failures to make full payment promptly constitute willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. 499b(4)). Accordingly, the following Order is issued.

**Order**

Respondent committed willful, flagrant and repeated violations of Section 2 of the Act (7 U.S.C. ' 499b) and the facts and circumstances set forth above shall be published.

This order shall take effect on the eleventh 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 the parties.

[This Decision and Order became effective July 11, 2001.-Editor].

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<sup>1</sup>Total amount should agree with prior table at \$462,347.31 - Editor