

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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OALJ/HCO

2004 SEP 28 A 8:47

In re:) PACA Docket No. D-04-0001
)
Southern Produce Distributors, Inc.)
)
Respondent)

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DECISION WITHOUT HEARING BY REASON OF CONSENT

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.; hereinafter "PACA"). On January 13, 2004, Complainant filed a Complaint alleging that from November 2000 through April 2003, Respondent willfully, flagrantly and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to fifty-three (53) sellers of the agreed purchase prices in the total amount of \$4,240,976.80 for 662 lots of perishable agricultural commodities which it purchased, received and accepted in contemplation of, or in interstate and foreign commerce. The Complaint requested that the Administrative Law Judge issue a finding that Respondent willfully, flagrantly and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order that the PACA license of Respondent be revoked.

The parties have now agreed to the entry of a Decision Without Hearing by Reason of Consent as set forth herein. Therefore, this Decision Without Hearing by Reason of Consent is 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.; hereinafter "Rules of Practice") applicable to this proceeding (7 C.F.R. §1.138).

Findings of Fact

1. Southern Produce Distributors, Inc., (hereinafter “Respondent”) is a corporation organized and existing under the laws of the State of North Carolina. Respondent’s business mailing address is P.O. Box 130, Faison, North Carolina 28341.
2. At all times material herein, Respondent was licensed under the PACA. PACA license number 19691274 was issued to Respondent on January 23, 1969. That license has been renewed annually and is next subject for renewal on or before January 23, 2005.
3. During the period November 2000 through April 2003, Respondent failed to make full payment promptly to 53 sellers of the agreed purchase prices in the total amount of \$4,240,976.80 for 662 lots of perishable agricultural commodities which it purchased, received and accepted in interstate and foreign commerce, or in contemplation of interstate or foreign commerce.

Conclusion

Respondent’s failure to make full payment promptly to 53 sellers of the agreed purchase prices of the perishable agricultural commodities described in Finding of Fact 3 above constitutes willful, flagrant and repeated violations of Section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

A finding is issued that Respondent has engaged in repeated and flagrant violations of the PACA. Respondent’s PACA license is revoked. However, that finding and the revocation of Respondent’s license shall be held in abeyance in accordance with the terms of the Understanding Regarding the Consent Decision (hereinafter “Understanding”) entered into

between Complainant and Respondent ~~executed on 9/22 and 9/16/04~~ ^{respectively.} If Respondent fails to satisfy the terms of the Understanding, the revocation of Respondent's PACA license will automatically take effect without further procedure, upon application of Complainant to the Administrative Law Judge. Respondent explicitly waives all further procedure regarding this case.

This order shall become final upon issuance. Copies of this order shall be served upon the parties.

Done at Washington, D.C.

this 27th day of September, 2004

~~_____~~
Administrative Law Judge

For Respondent

~~_____~~
M. Wayne Miller, Acting President
Southern Produce Distributors, Inc.

~~_____~~
David W. Procyte, Chief Executive Officer
Southern Produce Distributors, Inc.

~~_____~~ *
Gregory Crampton, Esq.
Attorney for Respondent

* Pursuant to Authority granted
in Bankruptcy Court Order
Authorizing Compromise of USDA
Adversary Proceeding entered on
September 16, 2004

For Complainant

~~_____~~
Eric M. Forman
Associate Deputy Administrator
Perishable Agricultural Commodities Branch
Fruit and Vegetable Programs
Agricultural Marketing Service

~~_____~~
Clara Kim, Esq.
Attorney for Complainant