

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
James L. Quinn,) AMAA Docket No. 04-0001
d/b/a Good Earth Farms,)
)
Respondent)

DECISION AND ORDER UPON
ADMISSION OF FACTS BY REASON OF DEFAULT

Preliminary Statement

This proceeding was instituted under the Agricultural Marketing Agreement Act of 1937 ("Act"), as amended (7 U.S.C. ' 601 et seq.), by a complaint filed by the Administrator of the Agricultural Marketing Service, United States Department of Agriculture, alleging that the Respondent willfully violated the Marketing Orders for Nectarines Grown in California, 7 C.F.R. Part 916 (the ANectarine Order@) and for Peaches Grown in California, 7 C.F.R. Part 917 (the APeach Order@), issued pursuant to the Act.

A copy of the complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. ' ' 1.130-1.151, were served on the Respondent by certified mail received on February 9, 2004.

The Respondent has failed to file an Answer within the time prescribed in accordance with Section 1.136 of the Rules of Practice, or at all, and the material facts alleged in the complaint, which are admitted by the Respondent's failure to file an answer, are adopted and set forth herein as Findings of Fact

and Conclusions of Law. This decision and order are issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. ' 1.139.

Findings of Fact and Conclusions of Law

1. Respondent James L. Quinn is an individual whose mailing address is 7176 E. Butler, Fresno, California. Respondent Quinn does business as, and is the sole proprietor of, Good Earth Farms, located at the same address.

2. At all times mentioned herein, Respondent James L. Quinn, dba Good Earth Farms, operated as a Ahandler@ of nectarines and peaches as defined in section 916.10 of the Nectarine Order (7 C.F.R. ' 916.10) and section 917.6 of the Peach Order (7 C.F.R. ' 917.6) during the 2000/01, 2001/02, and 2002/03 fiscal periods (beginning April 1, ending May 31). The Respondent has been a handler since at least 1989.

3. The Nectarine and Peach Orders require that handlers who handle nectarines and peaches shall, prior thereto, cause such nectarines and peaches to be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulations, and promptly after inspection and certification, the handlers must submit a copy of the certificate of inspection to the Nectarine Administrative Committee and the Peach Control Committee (Committees). 7 C.F.R. ' ' 916.55 and 917.45.

4. The Nectarine and Peach Orders require that handlers pay an assessment on nectarines and peaches that they handled pursuant to a rate established by the Secretary. 7 C.F.R. ' ' 916.41 and 917.37.

5. The rate of assessment on nectarines handled after March 1, 2001, is \$0.20 per 25-pound container or container equivalent of nectarines. 7 C.F.R. ' 916.234.

6. The rate of assessment on peaches handled after March 1, 1996, is \$0.1900 per 25-pound container or container equivalent of peaches. 7 C.F.R. ' 917.258.

7. The Nectarine and Peach Orders require that handlers must furnish to the Committees, prompt, accurate and periodic reports covering detailed information such as name of shipper and shipping point, identification of carrier, date and time of shipment, number and type of containers shipped, the quantities shipped with the variety, grade and size of fruit, destination, identification of the inspection certificate or waiver pursuant to which the fruits were handled, and price per package of peaches at which sold. 7 C.F.R. ' ' 916.60 and 917.50.

8. The Orders require that handlers must furnish to the Committees a recapitulation of shipments of each variety shipped and destination reports, at such times and for such periods as the Committees may designate.

9. During the 2000/01 fiscal period, and continuing to the present, Respondent handled at least 180 cartons of nectarines that he shipped without inspection prior to their shipment in violation of the Order. 7 C.F.R. ' 916.55.

10. During the 2001/02 fiscal period, and continuing to the present, Respondent handled at least 996 cartons of nectarines that he shipped without inspection prior to their shipment in violation of the Order. 7 C.F.R. ' 916.55.

11. During the 2002/03 fiscal period, and continuing to the present, Respondent handled at least 600 cartons of nectarines that he shipped without inspection prior to their shipment in violation of the Order. 7 C.F.R. ' 916.55.

12. During the 2000/01 fiscal period, and continuing to the present, Respondent handled at least 2,626 cartons of peaches that he shipped without inspection prior to their shipment in violation of the Order. 7 C.F.R. ' 917.45.

13. During the 2001/02 fiscal period, and continuing to the present, Respondent handled at least 1,654 cartons of peaches that he shipped without inspection prior to their shipment in violation of the Order. 7 C.F.R. ' 917.45.

14. Respondent handled at least 780 cartons of nectarines during the 2000/01 fiscal period. During this fiscal period, and continuing to the present, Respondent as a handler of nectarines failed to pay to the California Tree Fruit Agreement, the amount

(\$144.30) of assessments due on nectarines that he has handled in violation of 7 C.F.R. ' 916.41. Each day that Respondent failed to remit the assessments constitutes a separate violation of the Act and Order. 7 U.S.C. ' 608c(14)(B).

15. Respondent handled at least 2,207 cartons of nectarines during the 2001/02 fiscal period. During this fiscal period, and continuing to the present, Respondent as a handler of nectarines failed to pay to the California Tree Fruit Agreement, the amount (\$441.40) of assessments due on nectarines that he has handled in violation of 7 C.F.R. ' 916.41. Each day that Respondent failed to remit the assessments constitutes a separate violation of the Act and Order. 7 U.S.C. ' 608c(14)(B).

16. Respondent handled at least 1,181 cartons of nectarines during the 2002/03 fiscal period. During this fiscal period, and continuing to the present, Respondent as a handler of nectarines failed to pay to the California Tree Fruit Agreement, the amount (\$357.39) of assessments due on nectarines that he has handled in violation of 7 C.F.R. ' 916.41. Each day that Respondent failed to remit the assessments constitutes a separate violation of the Act and Order. 7 U.S.C. ' 608c(14)(B).

17. Respondent handled at least 3,091 cartons of peaches during the 2000/01 fiscal period. During this fiscal period, and continuing to the present, Respondent as a handler of peaches failed to pay to the California Tree Fruit Agreement, the amount

(\$587.29) of assessments due on peaches that he has handled in violation of 7 C.F.R. ' 917.37. Each day that Respondent failed to remit the assessments constitutes a separate violation of the Act and Order. 7 U.S.C. ' 608c(14)(B).

18. Respondent handled at least 2,578 cartons of peaches during the 2001/02 fiscal period. During this fiscal period, and continuing to the present, Respondent as a handler of peaches failed to pay to the California Tree Fruit Agreement, the amount (\$489.82) of assessments due on peaches that he has handled in violation of 7 C.F.R. ' 917.37. Each day that Respondent failed to remit the assessments constitutes a separate violation of the Act and Order. 7 U.S.C. ' 608c(14)(B).

19. Respondent handled at least 828 cartons of peaches during the 2002/03 fiscal period. During this fiscal period, and continuing to the present, Respondent as a handler of peaches failed to pay to the California Tree Fruit Agreement, the amount (\$157.32) of assessments due on peaches that he has handled in violation of 7 C.F.R. ' 917.37. Each day that Respondent failed to remit the assessments constitutes a separate violation of the Act and Order. 7 U.S.C. ' 608c(14)(B).

20. Respondent violated sections 916.60(a) and 916.160(b) of the Nectarine Order (7 C.F.R. ' ' 916.60(a) and 916.160(b)) by failing to file accurate reports for nectarines he handled during 2002. Respondent has failed to submit an amended report on

nectarines he handled during 2002 and was 215 days late in submitting the amended report as of June 18, 2003.

21. Respondent violated sections 916.160(b) and 916.160(c) of the Nectarine Order (7 C.F.R. ' ' 916.160(b) and 916.160(c)) by failing to file required reports on or before November 15 of 2000. Respondent has failed to submit Recapitulation Shipment and Destination reports on nectarines he handled during fiscal period 2000/01.

22. Respondent violated sections 916.160(b) and 916.160(c) of the Nectarine Order (7 C.F.R. ' ' 916.160(b) and 916.160(c)) by failing to file required reports on or before November 15 of 2001. Respondent has failed to submit Recapitulation Shipment and Destination reports on nectarines he handled during fiscal period 2001/02.

23. Respondent violated sections 916.160(b) and 916.160(c) of the Nectarine Order (7 C.F.R. ' ' 916.160(b) and 916.160(c)) by failing to file required reports on or before November 15 of 2002. Respondent has failed to submit Recapitulation Shipment and Destination reports on nectarines he handled during fiscal period 2002/03.

24. Respondent violated sections 917.178(b) and 917.178(c) of the Peach Order (7 C.F.R. ' ' 917.178(b) and 917.178(c)) by failing to file required reports on or before November 15 of 2000. Respondent has failed to submit Recapitulation Shipment

and Destination reports on peaches he handled during fiscal period 2000/01.

25. Respondent violated sections 917.178(b) and 917.178(c) of the Peach Order (7 C.F.R. ' ' 917.178(b) and 917.178(c)) by failing to file required reports on or before November 15 of 2001. Respondent has failed to submit Recapitulation Shipment and Destination reports on peaches he handled during fiscal period 2001/02.

26. Respondent violated sections 917.178(b) and 917.178(c) of the Peach Order (7 C.F.R. ' ' 917.178(b) and 917.178(c)) by failing to file required reports on or before November 15 of 2002. Respondent has failed to submit Recapitulation Shipment and Destination reports on peaches he handled during fiscal

period 2002/03.

Conclusions

1. The Secretary has jurisdiction in this matter.
2. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. The Respondent is assessed a civil penalty of \$15,000, which shall be paid by a certified check or money order made payable to the Treasurer of United States and shall be sent to Robert A. Ertman, Attorney, Office of the General Counsel, United States Department of Agriculture, Room 2014 South Building, Washington, D.C. 20250.

2. Respondent, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and issued thereunder, and in particular:

(a) from failing to file complete, accurate, and timely reports as required by the Nectarine and Peach Orders;

(b) from failing to have fruit inspected prior to shipment, as required by the Nectarine and Peach Orders;

(c) from failing to pay to the California Tree Fruit Agreement \$943.09 in past due assessments under the Nectarine Order for fiscal periods 2000/01, 2001/02, and 2002/03; \$1234.43 in past due assessments under the Peach Order for fiscal periods

2000/01, 2001/02, and 2002.03; and

(d) from failing to pay assessments under the Nectarine

and Peach Orders in a timely manner, as required by the Orders.

The provisions of this order shall become effective on the first day after this decision becomes final.

Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. ' ' 1.142 and 1.145.

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
this 11th day of March, 2005

Peter M. Davenport
Administrative Law Judge