

**AMERICAN GROWERS, INC. v. CALIFORNIA CITRUS SELECTORS,
d/b/a VOITA CITRUS.
PACA Docket No. R-00-0016.
Decision and Order filed April 4, 2000.**

George S. Whitten, Presiding Officer.
Thomas W. Johnston, P.A., Pompano Beach, FL, for Complainant.
Respondent, Pro se.
Decision and Order issued by William G. Jenson, Judicial Officer.

Preliminary Statement

This is a reparation proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*). A timely complaint was filed in which Complainant seeks an award of reparation in the amount of \$12,548.01 in connection with three transactions in interstate commerce involving watermelons.

Copies of the Report of Investigation prepared by the Department were served upon the parties. A copy of the formal complaint was served upon Respondent which filed an answer thereto denying liability to Complainant.

The amount claimed in the formal complaint does not exceed \$30,000.00, and therefore the documentary procedure provided in the Rules of Practice (7 C.F.R. § 47.20) is applicable. Pursuant to this procedure, the verified pleadings of the parties are considered a part of the evidence in the case as is the Department's Report of Investigation. In addition, the parties were given an opportunity to file evidence in the form of sworn statements. Complainant filed an opening statement, Respondent filed an answering statement, and Complainant filed a statement in reply. Both parties filed briefs.

Findings of Fact

1. Complainant, American Growers, Inc., is a corporation whose address is 3019 SR 15, Suite 4, Belle Glade, Florida.
2. Respondent, California Citrus Selectors, is a corporation doing business as Voita Citrus, whose address is 506 N. Kaweak Ave. Suite C, Exeter, California. At the time of the transactions involved herein Respondent was licensed under the Act.
3. On or about July 10, 1998, Complainant sold to Respondent one bulk truck load of watermelons containing 45,800 pounds at \$.0550 per pound or \$2,519.00. The load was shipped from loading point in Tifton, Georgia, on or about July 10, 1998, to Respondent's customer in Akron, Ohio.
4. The load arrived in Akron, Ohio on or about July 14, 1998, and trouble was reported to Complainant's salesman, Scott Painter, who asked that the melons be inspected. Following the inspection Scott Painter agreed with Respondent to grant full protection with the understanding that Respondent's customer would handle the

sales of the melons, and would not provide an accounting. Respondent's customer returned \$1,258.50 from the sales of the melons. Respondent paid a freight bill on the load in the amount of \$1,603.00, and deducted \$344.50 from other invoices due Complainant.

5. On or about July 30, 1998, Complainant sold to Respondent one bulk truck load of watermelons containing 40,440 pounds at \$.0650 per pound or \$2,628.60. The load was shipped from loading point in Mount Olive, North Carolina, on or about July 30, 1998, to Respondent's customer in Stevens Point, Wisconsin.

6. The load arrived in Stevens Point, Wisconsin on or about August 3, 1998, and trouble was reported to Complainant's salesman, Scott Painter, who authorized the transfer of the load to Magilio Produce, in Glendale, Wisconsin, and asked that the melons be inspected. Following the inspection Scott Painter agreed with Respondent to grant full protection with the understanding that Respondent's customer would handle the sales of the melons, and would not provide an accounting. Magilio reported a negative return of \$881.05 from the sales of the melons. Respondent paid a freight bill on the load in the amount of \$1,649.00, and deducted \$2,530.05 from other invoices due Complainant.

7. On or about August 1, 1998, Complainant sold to Respondent one bulk truck load of watermelons containing 38,520 pounds at \$.0650 per pound or \$2,503.80. The load was shipped from loading point in Mount Olive, North Carolina, on or about August 1, 1998, to Respondent's customer in Stevens Point, Wisconsin.

8. The load arrived in Stevens Point, Wisconsin on or about August 3, 1998, and trouble was reported to Complainant's salesman, Scott Painter, who authorized the transfer of the load to Magilio Produce, in Glendale, Wisconsin, and asked that the melons be inspected. Following the inspection Scott Painter agreed with Respondent to grant full protection with the understanding that Respondent's customer would handle the sales of the melons, and would not provide an accounting. Magilio reported a negative return of \$373.06 from the sales of the melons. Respondent paid a freight bill on the load in the amount of \$1,649.00, and deducted \$2,022.06 from other invoices due Complainant.

9. The informal complaint was filed on February 16, 1999, which was within nine months after the causes of action alleged herein accrued.

Conclusions

Complainant seeks to recover the purchase prices, totaling \$7,651.40, of three loads of bulk watermelons, plus deductions made by Respondent for alleged deficits in amounts totaling \$4,896.61, or a total of \$12,548.01. Respondent admits the purchase and acceptance of the melons, but alleges that they arrived at the destinations in a deteriorated condition, and that Complainant's salesman, Scott Painter, agreed to the loads being handled by Respondent's customers with full protection against any loss, and with no requirement that accountings be rendered.

Respondent submitted sworn statements by Scott Painter which fully support its contention that full protection was granted, and that no accounting was required. Complainant contended that Scott Painter had no authority to grant protection on the loads. However, Complainant clearly clothed Painter with such authority.¹ We conclude that Complainant granted full protection to Respondent with no requirement that accountings be rendered. Other contentions made by Complainant have been fully considered in arriving at our conclusions herein. The complaint should be dismissed.

Order

The complaint is dismissed.

Copies of this order shall be served upon the parties.

¹See *Joe Phillips, Inc. v. City Wide Distributors, Inc.*, 44 Agric. Dec. 468, 1400 (1985); *Western Cold Storage v. Schons*, 38 Agric. Dec. 903 (1979); *Johnson Produce v. R. L. Burnett Brokerage Co.*, 37 Agric. Dec. 1743 (1978); *George Arakelian v. Leonard O'Day*, 31 Agric. Dec. 1395 (1972); *The G. Fava Co. v. Parkhill Produce Co.*, 19 Agric. Dec. 928 (1960); *Robert Johnson v. Carl Fritchey, et al.*, 16 Agric. Dec. 1082 (1957); and *Tri-State Sales Agency v. Palmetto Fruit & Produce Co.*, 14 Agric. Dec. 1140 (1955).