

**THE PRODUCE CONNECTION, INC. v. BRUCE M. LINCIS, d/b/a  
RAINBOW PRODUCE COMPANY.  
PACA Docket No. R-99-0142.  
Decision and Order filed April 17, 2000.**

George S. Whitten, Presiding Officer.

Complainant, Pro se.

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 \$42,413.79 in connection with eighty-five transactions in interstate commerce involving mixed perishable produce.

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 for the amount claimed, but admitting that \$20,567.25 was due to Complainant. An order was issued on July 14, 1999, for that amount with interest.

The amount claimed in the formal complaint exceeds \$30,000.00, however, the parties waived oral hearing, 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. Respondent filed a brief.

**Findings of Fact**

1. Complainant, The Produce Connection, Inc., is a corporation whose address is P.O. Box 42036-373, Phoenix, Arizona.

2. Respondent, Bruce M. Lincis, is an individual doing business as Rainbow Produce Company, whose address is 2105 E. Magnolia, Phoenix, Arizona. At the time of the transactions involved herein Respondent was licensed under the Act.

3. On or about August 1, 1998, through December 18, 1998, Complainant sold to Respondent eighty-five lots of mixed perishable produce having a total invoice value of \$63,732.20. The produce was sold on a delivered basis, and was either picked up by Respondent at Complainant's warehouse at 921 E. Madison, Phoenix, Arizona, or delivered by Complainant to Respondent at 2105 E. Magnolia, Phoenix,

Arizona. In each instance Respondent inspected each individual package of produce, and accepted it at time of delivery.

4. The informal complaint was filed on January 29, 1999, which was within nine months after the causes of action alleged herein accrued.

### **Conclusions**

Complainant's eighty-five invoices show prices totaling \$63,732.20. The formal complaint claims that \$42,413.79 remains unpaid. By inference this means that Complainant admitted the payment of \$21,309.41 at the time the complaint was filed. The formal answer filed on June 29, 1999, admitted that \$20,567.25 was then due. On July 12, 1999, Complainant wrote to this Department stating that Respondent had made a payment of \$2,562.50, leaving a balance still due of \$39,851.29. On July 14, 1999, an Order was issued for the \$20,567.25 admitted due by Respondent in his answer. Pursuant to this Order Respondent made payments to Complainant that totaled \$22,623.98. This overpaid the amount due under the order of July 14, 1999 (\$20,567.25 principal, and \$1,262.54 interest) by \$794.19. When the \$20,567.25 payment on the principal amount plus the excess payment of \$794.19 is credited against the \$39,815.29 claimed due by Complainant immediately prior to the issuance of the July 14, 1999 order, a balance of \$18,489.85 is left as the remaining amount which should be claimed due by Complainant.<sup>1</sup>

We will now assess the validity of Complainant's claim as to this remaining amount. Respondent in his answer admitted receipt of the produce, and that the produce was inspected by an agent of Respondent. Respondent additionally asserted that Complainant "was in fact notified of any discrepancy verbally by phone or in written form via fax, within 24 hours of receipt of product." Respondent did not specify which of the invoices, or what discrepancies, he had in mind. Complainant pointed out, and submitted statements by its employees to verify, that each individual package was inspected by Respondent's agent at time of delivery. It appears to be Complainant's contention that by this detailed inspection at time of delivery Respondent waived objection to any problems with the produce. We agree with this contention.<sup>2</sup> However, again without reference to specific transactions, Respondent also offers the following "shotgun" defense:

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<sup>1</sup>For some inexplicable reason Complainant claimed in its opening statement that \$25,121.70 remained due on September 23, 1999.

<sup>2</sup>See UCC § 2-316. Compare *Primary Export International v. Blue Anchor, Inc.*, 56 Agric. Dec. 969 (1997) for the applicability of this section where the terms are f.o.b.

The respondent has in fact made payments on the invoices. Do (sic) to the fact that The Produce Connection., (sic) has missadded (sic) invoices, misapplied payments, neglected to issue credits for refused or rejected product, billed for product that was in fact not received by the respondent. There is a large discrepancy of the balance owed. There are 6 invoices which the respondent has no record of, the copies provided does (sic) not have a signature, therefor (sic) respondent at this time is not certain of receipt of the product on these invoices.

Unfortunately, Respondent did not specify which transactions he referred to in the foregoing paragraph. However, we have examined each of the eighty-five invoices, together with other documentation attached to Respondent's answer. We were unable, from this examination, to confirm most of the defenses alleged by Respondent. There are, however, payment allegations as to some of the transactions that were not replied to by Complainant. Respondent attached copies of checks showing that certain invoices had been paid by him in the amounts originally claimed by Complainant, or in greater amounts than asserted by Complainant, and in two cases that Complainant was overpaid. These transactions are as follows:

Inv. #	Date	Inv. Amount	Explanation
16132	10/10	\$ 861.00	Complainant claims this invoice was paid \$4.00 short; however, Respondent's payment check shows that it was paid in the amount of \$867.00, or a \$6.00 overpayment.
16994	11/6	\$1,234.00	Complainant claims this invoice was paid \$24.50 short; however, Respondent's payment check shows that it was paid in full.
17057	11/9	\$1,765.25	Complainant claims that this invoice was not paid in any amount; however, Respondent's payment check shows it paid in the amount of \$1,761.50, or \$3.75 short.
17086	11/9	\$ 87.00	Complainant claims this invoice was not paid; however, Respondent's payment check shows

			that it was paid in full.
17100	11/10	\$ 714.00	Complainant claims this invoice was not paid; however, Respondent's payment check shows that it was paid in full.
17122	11/11	\$1,464.00	Complainant's copy of the invoice shows \$1,600.00 (written in a different hand from the remainder of the invoice) as the "Net Total." The \$136.00 difference between this and the \$1,464.00 is claimed as "Short paid." However the original total is \$1,464.00, and this is the only total that Respondent's invoice shows. Respondent's check shows \$1,464.00 paid. We conclude that Respondent has paid the amount invoiced.
18652	11/19	\$ 281.50	Complainant claims this invoice was not paid; however, Respondent's payment check shows that it was paid in full.
18665	11/20	\$1,294.00	Complainant claims this invoice was not paid; however, Respondent's payment check shows that it was paid in full.
18680	11/20	\$ 840.50	Complainant claims this invoice was not paid; however, Respondent's payment check shows that it was paid in full.
18687	11/20	\$ 275.00	Complainant claims this invoice was not paid; however, Respondent's payment check shows that it was paid in full.
18710	11/21	\$ 235.00	Complainant claims this invoice

			was not paid; however, Respondent's payment check shows that it was paid in full.
18723	11/23	\$1,003.75	Complainant claims this invoice was not paid; however, Respondent's payment check shows that it was paid in full.
18738	11/23	\$ 525.00	Complainant claims this invoice was not paid; however, Respondent's payment check shows that it was paid in the amount of \$532.00.00, or a \$7.00 overpayment.
18767	11/24	\$ 900.75	Complainant claims this invoice was not paid; however, Respondent's payment check shows that it was paid in the amount of \$893.75, or \$7.00 short.
18803	11/25	\$ 885.25	Complainant claims this invoice was not paid; however, Respondent's payment check shows that it was paid in full.
18816	11/25	\$ 181.00	Complainant claims this invoice was not paid; however, Respondent's payment check shows that it was paid in full.
18844	11/27	\$ 855.00	Complainant claims this invoice was not paid; however, Respondent's payment check shows that it was paid in full.

Complainant did not respond in its opening statement or statement in reply to these documents. We conclude that Respondent should be credited with \$10,009.75 against Complainant's remaining \$18,489.85 claim.

Respondent also attached to its answer copies of numerous invoices from Respondent to Complainant. These are preceded in the documents attached to

Respondent's answer by tabulations of some of Complainant's invoices which show the invoices paid, whereas Complainant shows them not paid. The tabulation charges Complainant's invoices against an invoice referred to as 10998 for \$9,993.15. None of Respondent's invoices to Complainant has this number, and there is no compilation of these invoices having this number.<sup>3</sup> We could have added all of Respondent's invoices up to see if they total \$9,993.15, but it is not for us to go so far in making Respondent's case for him. Even if the invoices do add up to \$9,993.15 we could not give Respondent credit for this amount since Respondent's answer made no allegation about sales by Respondent to Complainant, or about any claim for off-sets. Some reasonable notice is required to Complainant as to the nature of Respondent's defense.

We conclude that there remains due from Respondent to Complainant the sum of \$8,480.10. Respondent's failure to pay Complainant this amount is a violation of section 2 of the Act.

Section 5(a) of the Act requires that we award to the person or persons injured by a violation of section 2 of the Act "the full amount of damages sustained in consequence of such violations." Such damages include interest.<sup>4</sup> Since the Secretary is charged with the duty of awarding damages, he also has the duty, where appropriate, to award interest at a reasonable rate as a part of each reparation award.<sup>5</sup> We have determined that a reasonable rate is 10 percent per annum.

Complainant was required to pay a \$300.00 handling fee to file its formal complaint. Pursuant to 7 U.S.C. 499e(a), the party found to have violated Section 2 of the Act is liable for any handling fees paid by the injured party.

### **Order**

Within 30 days from the date of this order respondent shall pay to complainant, as reparation, \$8,480.10, with interest thereon at the rate of 10% per annum from January 1, 1999, until paid, plus the amount of \$300.

Copies of this order shall be served upon the parties.

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<sup>3</sup>There is no compilation of the invoices at all.

<sup>4</sup>*L & N Railroad Co. v. Sloss Sheffield Steel & Iron Co.*, 269 U.S. 217 (1925); *L & N Railroad Co. v. Ohio Valley Tie Co.*, 242 U.S. 288 (1916).

<sup>5</sup>See *Pearl Grange Fruit Exchange, Inc. v. Mark Bernstein Company, Inc.*, 29 Agric. Dec. 978 (1970); *John W. Scherer v. Manhattan Pickle Co.*, 29 Agric. Dec. 335 (1970); and *W. D. Crockett v. Producers Marketing Association, Inc.*, 22 Agric. Dec. 66 (1963).