

**In re: HURWITZ DISTRIBUTING COMPANY, INC.
PACA Docket No. D-00-0006.
Decision and Order filed August 11, 2000.**

Kimberly D. Hart, for Complainant.
Respondent, Pro se.
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 March 8, 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 of June 4, 1998, through October 15, 1998, Respondent, Hurwitz Distributing Company, Inc. [hereinafter "Respondent"], failed to make full payment promptly to 44 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$997,078.99 for 321 lots of perishable agricultural commodities, which it received, accepted and sold in interstate and foreign commerce. In February 1999, a pro rata distribution of trust assets totaling \$179,712.85 was made to thirty-nine (39) PACA claimants who protected their trust rights under Section 5(c) of the PACA (7 U.S.C. § 499e(c)) by filing timely trust notices. This pro rata distribution reduced the amount that remains past due and unpaid for purchases made by Respondent in the course of interstate and foreign commerce to \$817,366.14.

A copy of the complaint was served upon Respondent on March 20, 2000, which Respondent has not answered. The time for filing an answer having expired, and upon motion of the Complainant for issuance of a default order, the following Decision and Order shall be issued without further investigation of hearing pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.1.39).

Findings of Fact

1. Respondent is a corporation whose business address is 55 Galli Drive, Suite J, Novato, California 94949-5713. Its mailing address is P.O. Box 4280, San Rafael, California 94913-4280.
2. At all times material herein, Respondent was licensed under the provisions of the Act. PACA license number 840901 was issued to Respondent on March 16, 1984. This license terminated on March 16, 1984, pursuant to Section 4(a) of the Act (7 U.S.C. § 499d(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. As set forth more fully in paragraph III of the complaint, Respondent, during the period of June 4, 1998 and October 15, 1998, failed to make full payment promptly to forty-four (44) sellers of the agreed purchase prices, or balances thereof, in the total amount of \$997,078.99 for 321 lots of perishable agricultural commodities, which it received, accepted and sold in interstate and foreign commerce. In February 1999, a pro rata distribution of trust assets totaling \$179,712.85 was made to thirty-nine (39) PACA claimants who protected their trust rights under Section 5(c) of the Act (7 U.S.C. §499e(c)) by filing time trust notices. This pro rata distribution reduced the amount that remains past due and unpaid for produce purchases made by Respondent in the course of interstate and foreign commerce to \$817,366.14.

5. On October 19, 1999, Respondent filed a Voluntary Petition for Bankruptcy pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. § 700 *et seq.*) in the United States Bankruptcy Court for the Northern District of California. This petition has been designated Case No. 99-13208.

Conclusions

Respondent's failure to make full payment promptly with respect to the transactions set forth in Finding of Fact No. 4 above, constitutes willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)) for which the Order below is issued.

Order

It is ordered that Respondent's willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)) be published.

This Order shall become effective on the eleventh day after this Decision becomes final. Pursuant to the Rules of Practice Governing Proceedings Under the Act, this Decision shall become final without further proceedings within thirty-five days after service hereof, unless appealed to the Secretary by a party to the proceedings within thirty 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 final September 26, 2000.-Editor]
