

**In re: MATOS PRODUCE CORP.
PACA Docket No. D-00-0017.
Decision and Order filed October 20, 2000.**

Mary Kyle Hobbie, for Complainant.
Respondent, Pro se.
Decision and Order issued by Dorothea A. Baker, 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 June 7, 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 October 1998 through May 1999, Respondent Matos Produce Corp. [hereinafter "Respondent"] failed to make full payment promptly to 17 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$591,424.00 for 186 shipments of perishable agricultural commodities, which it purchased, received and accepted in interstate commerce. The complaint also noted that on June 3, 1999, Respondent filed a voluntary petition in the United States Bankruptcy Court for the Southern District of New York, New York Division pursuant to Chapter 7 of the Bankruptcy Code (7 U.S.C. § 700 *et seq.*), designated Case No. 99B43551. Complainant requested that a finding be made that Respondent committed willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499(4)), and that such findings be published.

Respondent has admitted in documents filed in connection with its Chapter 7 bankruptcy proceeding entitled Scheduled F - Creditors Holding Unsecured Nonpriority Claims that it owes all of the 17 sellers listed in Paragraph III of the Complaint \$579,700.10. The Complaint alleged debt to the same 17 sellers of \$591,424.00. This admission warrants the immediate issuance of a Decision without Hearing by Reason of Admissions. Complainant has filed a Motion for the issuance of a Decision without Hearing by Reason of Admissions, and the following Decision is issued without further investigation or hearing pursuant to Section 1.139 of the Rules of Practices (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent is a corporation whose business address was 20-21 Bronx Terminal Market, Bronx, New York 10451.
2. Pursuant to the licensing provisions of the PACA, license number 980486 was issued to Respondent on January 20, 1998. This license terminated on January 20, 2000, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499(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. The Deputy Administrator, Fruit and Vegetable Division, AMS filed a Complaint alleging that Respondent, during the period October 1998 through May 1999, on or about the dates and in the transactions set forth in paragraph III of the Complaint, purchased, received and accepted 186 shipments of perishable agricultural commodities with agreed purchase prices in the total of \$591,424.00 from 17 sellers in interstate commerce.

5. On June 3, 1999, Respondent filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code (7 U.S.C. § 700 *et seq.*) in the United States Bankruptcy Court for the Southern District of New York, New York Division. This petition has been designated Case No. 99B43551.

6. Respondent has admitted in bankruptcy pleadings that it owes an amount that totals \$579,700.10, an amount less than that which the Complaint alleged, to the same 17 sellers that are alleged to be unpaid for purchases in the Complaint. Schedule F consists of a table reflecting the name and address of the creditor and the amount of the unpaid produce debt as shown in the Complaint and in Respondent's bankruptcy filing.

SELLER'S NAME & ORIGIN	BANKRUPTCY PLEADING	COMPLAINT
World Food Trade Inc.,Miami, FL	\$ 10,220.00	\$ 10,260.00
T.C. Tropical Products, Bronx, NY Origin: Costa Rica Columbia, Ecuador, Dominican Republic, Trinidad, Tobago, CA, FL, ID	\$194,931.45	\$164,910.45
C.H. Robinson Company Minneapolis, MN	\$114,452.00	\$122,124.00
Armeno Foods, Inc., Bergenfield, NJ	\$ 11,969.50	\$ 21,027.50
Del Monte Fresh Produce N.A., Inc., Coral Gables, FL	\$ 63,870.80	\$ 75,100.00
Dade South Fruits & Vegetables, Inc. Miami, FL	\$ 36,625.00	\$ 38,098.50

Yucatica S.A. Costa Rica	\$ 21,261.00	\$ 33,408.00
Gonzalez and Tapanes a/t/a La Fe Foods North Bergen, NJ	\$ 3,505.00	\$ 3,656.00
Maurice A. Auerbach, Inc. South Hackensack, NJ	\$ 9,321.00	\$ 9,321.00
Banana Distributors of New York, Inc. Bronx, NY Origin: Ecuador, Columbia, Costa Rica, CA	\$ 13,713.00	\$ 14,991.00
Reliable of Miami, Inc. Miami, FL	\$ 2,174.00	\$ 3,890.00
Nalosa, LLC Wesalco, TX	\$ 1,932.00	\$ 476.00
M & M Packaging, Inc. Goshen, NY Orgin: TX, OR, ND, ME, MI	\$ 16,166.00	\$ 21,334.30

K.V.K International Elmont, NY Orgin: Trinidad, Grenada	\$ 3,824.75	\$ 3,824.75
American Banana Co. Inc. Origin: Ecuador, Colombia, Costa Rica	\$ 67,660.00	\$ 65,394.50 Less Offset: - 4,536.00 \$ 60,858.50
Lili Ochoa, Inc. Miami, FL	\$ 7,889.00	\$ 7,909.00
D'Amico Farm Allentown, NJ	\$ 185.00	\$ 235.00
	Total Amount: \$579,700.10	Total Amount 591,424.00

Conclusions

Respondent has admitted in the petition and schedules that were filed in its bankruptcy proceeding that it still owed 17 sellers at least \$579,700.10 for 186 shipments of perishable agricultural commodities on June 3, 1999. Respondent's admitted failures to make full payment promptly constitute willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)). Accordingly, the following Order is issued.

Order

Respondent committed willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b) and the facts and circumstances set forth above shall be published.

This order shall take effect on the eleventh day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this

Decision will become final without further proceedings 35 days after service hereof, unless appealed to the Secretary by a party to the proceeding within 30 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 December 3, 2000.-Editor]
