

**In re GLACIER DISTRIBUTION COMPANY, INC.
PACA Docket No. D-00-0026.
Supplemental Order Revoking Respondent's License.
Filed March 5, 2002.**

Christopher P. Young-Morales, for Complainant.
Respondent, Pro se.
Decision and Order issued by Judge James W. Hunt, Chief, Administrative Law Judge.

PACA – Sanctions – Agreement, breach of payment terms.

Parties entered into a Compliance Agreement whereby civil money penalties were agreed to be paid by the Respondent upon a date certain. Respondent failed to fully comply with the payment terms therein. Under the terms of the agreement, a breach of the payment terms would, upon unilateral request by the Complainant, result in the revocation of the Respondent's license without further administrative action.

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (PACA), instituted by a complaint filed on September 7, 2000, by the Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture.

The complaint alleged that Respondent willfully, flagrantly and repeatedly violated section 2(4) of the PACA by failing to make full payment promptly of \$208,089.80 to 10 sellers for 17 lots of perishable agricultural commodities sold in interstate commerce from July 1999 through February 2000. The complaint requested the issuance of an order finding that Respondent had committed willful, flagrant and repeated violations of the PACA and ordering Respondent's violations published.

On May 3, 2001, a Decision Without Hearing By Reason of Consent was issued in this case whereby Respondent Glacier Distribution Company, Inc. (hereinafter Respondent) was found to have committed willful, flagrant and repeated violations of section 2(4) of the PACA. The order required Respondent to pay a civil penalty of \$75,000 and to comply with all the terms of an Understanding Regarding Civil Penalty and Compliance Agreement, entered into by Respondent and Complainant on May 1, 2001.

The Understanding Regarding Civil Penalty and Agreement required, *inter alia*, that Respondent pay the civil penalty in two separate payments. The first payment in the amount of \$30,000 was to be paid immediately upon receipt and signature of the Decision Without Hearing By Reason of Consent, and the second payment of \$45,000 "shall be made no later than May 31st by check or money order payable to the United States Treasury." The first payment in the amount of \$30,000 was received by USDA, PACA Branch on May 15, 2001. A check for the second payment in the amount of \$45,000 was received by USDA, PACA Branch on June 13, 2001. On August 23, 2001, USDA, PACA Branch received notice from USDA, National Finance Center that Respondent's check for the second payment in the amount of \$45,000 had been returned by Respondent's financial institution for Non-Sufficient Funds.

Complainant has filed a motion for a Supplemental Order Revoking Respondent's license and implementation of all sanctions prescribed by the Act following such revocation, stating that the civil penalty has not been paid in accordance with the Understanding Regarding Civil Penalty and Agreement or the Decision Without Hearing By Reason of Consent. Complainant points to The Understanding Regarding Civil Penalty and Agreement which provides that "in the event the payment required to be made by Respondent . . . is not made, Respondent's license and the license of its successors or assigns will be revoked without further administrative proceedings, . . . and all of the sanctions prescribed

by the Act following such revocation or publication will be in effect.”

The Understanding Regarding Civil Penalty and Agreement did not state the year in which the second payment in the amount of \$45,000 was to be paid. I find that the parties intended that the second payment was to be made by May 31, 2001. Respondent indicated it believed that this was the deadline for making the payment by sending a check to Complainant dated May 31, 2001, and it did not file objections to Complainant’s Motion for Supplemental Order in which Complainant stated that Respondent failed to make the required second payment by May 31, 2001.

Therefore, as Respondent has failed to pay the \$45,000 portion of the civil penalty by the date agreed to in the Understanding Regarding Civil Penalty and Agreement, Respondent is in violation of both the Understanding Regarding Civil Penalty and Agreement and the Decision Without Hearing By Reason of Consent.

Accordingly, Respondent’s license is hereby revoked, and all of the sanctions prescribed by the Act following such revocation will be in effect. This Decision and Order will become final without further proceedings upon its issuance, pursuant to section 1.138 of the Rules of Practice (7 C.F.R. § 1.138).

Copies of this order shall be served upon the parties.
