

**In re: DEMMA FRUIT COMPANY.  
PACA Docket No. D-01-0029.  
Decision Without Hearing By Reason of Default.  
Filed March 7, 2002.**

**PACA – Default – Payment, failure to make, prompt – Late payment of sellers.**

Charles Spicknall, 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 August 30, 2001, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. It is alleged in the complaint that from October 24, 1999 through October 1, 2000, Demma Fruit Company, Ltd. (hereinafter “Respondent”) purchased, received and accepted, in interstate and foreign commerce, from 59 sellers, 1577 lots of fruits and vegetables, all being perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$4,397,950.91.

A copy of the complaint was mailed to Respondent by certified mail and was refused or unclaimed. Therefore, pursuant to section 1.147(c)(1) of the Rules of Practice, (7 C.F.R. § 1.147), the complaint was served on Respondent on September 19, 2001 by regular mail. The complaint has not been answered. The time for filing an answer having run, and upon Complainant’s motion for the issuance of a default order, the following Decision and Order is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

### **Findings of Fact**

1. Respondent, Demma Fruit Company, Ltd., is a corporation organized and existing under the laws of the State of Nebraska. Respondent’s business mailing address is 11235 John Gault Boulevard, Omaha, Nebraska 68137.

2. At all times material herein, Respondent was licensed under the Act. License number 890859 was issued to Respondent on March 14, 1989. This license terminated on March 14, 2001, pursuant to Section 4(a) of the PACA (7 U.S.C. §499d(a)), when Respondent failed to pay the required annual renewal fee.

3. During the period from October 24, 1999 through October 1, 2000, Respondent failed to make full payment promptly to 59 sellers for 1577 lots of fruits and vegetables that it purchased, received and accepted in interstate and foreign commerce in the total amount of \$4,397,950.91.

### **Conclusions**

Respondent’s failure to make full payment promptly with respect to the 1577 transactions described above, constitutes willful, repeated and flagrant violations of Section 2 of the Act (7 U.S.C. § 499b), for which the Order below is issued.

### **Order**

A finding is made that Respondent has committed willful, flagrant and repeated violations of Section 2 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 11th 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 thirty-five days after service hereof unless appealed to the Secretary by a party to the proceeding 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 parties.

[This Decision and Order became final June 11, 2002.-Editor]

-----