

In re: T. RODES AND SONS, INC.
PACA Docket No. D-01-0002.
Decision Without Hearing.
Filed November 8, 2001.

PACA – Default – Prompt payment, failure to make.

Christopher Young-Morales, for Complainant.

Andrew M. Osborne for Respondent.

Decision and Order issued by Dorthea 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 October 24, 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 February through December 1999, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 16 sellers, 119 lots of perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$323,016.67.

A copy of the Complaint was served upon Respondent; Respondent submitted an answer in which it generally denied the allegations of the Complaint pertaining to its failure to make payment promptly. On July 10 through July 20, 2001 a follow up investigation was conducted by the PACA Branch of the Agricultural Marketing Service which revealed that as of July 18, 2001, 13 of the 16 sellers listed in the Complaint were still owed \$71,766.97. Based on the results of the investigation, Complainant filed a Motion for an Order Requiring Respondent to Show Cause Why a Decision Without Hearing Should Not Be Issued; Respondent did not answer the Motion.

Hearing no objection, Administrative Law Judge Baker issued a Notice To Show Cause Why A Decision Without Hearing Should Not Be Issued, based upon Complainant's allegation in its Motion, substantiated by affidavit, that Respondent failed to pay the produce debt alleged in the Complaint within 120 days of the service of the Complaint.

Under the sanction policy enunciated by the Judicial Officer in *In re Scamcomp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 547 (1998), "PACA requires full payment promptly, and commission merchants, dealers and brokers are required to be in compliance with the payment provisions of the PACA at all times In

any PACA disciplinary proceeding in which it is shown that a [R]espondent has failed to pay in accordance with the PACA and is not in full compliance with the PACA within 120 days after the [C]omplaint is served on that [R]espondent, or the date of the hearing, whichever occurs first, the PACA case will be treated as a "no-pay" case In any "no-pay" case in which the violations are flagrant or repeated, the license of a PACA licensee, shown to have violated the payment provisions of the PACA, will be revoked." *Id.* at 548-549.

According to the Judicial Officer's policy set forth in *ScamCorp*, this Respondent had 120 days from the date the complaint was served upon it, or until March 14, 2001, to come into full compliance with the PACA. Therefore, as Respondent was not in full compliance by that date, this case should be treated as a "no pay" case for purposes of sanction, which warrants the issuance of a Decision Without Hearing finding that Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA and revoking Respondent's license.

As Respondent has failed to Show Cause Why a Decision Without Hearing Should Not Be Issued, 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 is a corporation organized and existing under the laws of the state of Massachusetts. Its business mailing address is 126-127 New England Produce Center, Chelsea, Massachusetts 02150-1711.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. Pursuant to the licensing provisions of the Act, license number 991579 was issued to Respondent on August 24, 1999. This license was renewed on its anniversary date on August 24, 2000, but was not renewed on August 24, 2001.
3. As more fully set forth in paragraph III of the Complaint, during the period February through December 1999, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 16 sellers, 119 lots of fruits and vegetables, all being perishable agricultural commodities, and failed to make full payment promptly of the agreed purchase prices, in the total amount of \$323,016.67.
4. Respondent failed to pay the produce debt described above and to come into full compliance with the PACA within 120 days of the filing of the Complaint against it.

Conclusions

Respondent's failure to make full payment promptly with respect to the 119 transactions set forth in Finding of Fact No. 3, above, constitutes willful, flagrant and repeated violations of Section 2(4) 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 license of Respondent shall be revoked.

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 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 parties.

[Note: This decision and order became final December 29, 2001- Editor]
