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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

DEC 10 2009

In re:) PACA Docket No. D-09-0149
)
Phillies Tomato & Produce Corp.,)
)
) Decision Without Hearing
Respondent) by Reason of Consent

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agriculture Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*)(the “Act”), instituted by a Complaint filed on July 15, 2009, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleged that during the period May 19, 2007 through October 18, 2007, Respondent Phillies Tomato & Produce Corp. (hereinafter “Respondent”) failed to make full payment promptly of the agreed purchase price for 289 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate commerce from 26 sellers, in the total amount of \$1,241,848.35.

The Complaint requested that the Administrative Law Judge find that Respondent has willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)), and order the facts and circumstances of these violations published.

Respondent and Complainant have now agreed to the entry of a Decision Without Hearing by Reason of Consent as to these allegations as set forth herein. Therefore, this Decision Without Hearing by Reason of Consent is entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*) (Rules of Practice).

Findings of Fact

1. Phillies Tomato & Produce Corp., (hereinafter “Respondent”), is a corporation registered in the State of Pennsylvania. Respondent’s business address was 3301 South Galloway Unit 101, Philadelphia, Pennsylvania, 19148.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 19940472 was issued to Respondent on December 30, 1993. The license terminated on December 30, 2007, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual fee.

3. The Secretary has jurisdiction over Respondent and the subject matter involved herein.

4. As set forth in paragraph III and specified in Appendix A of the Complaint, during the period May 19, 2007 through October 18, 2007, Respondent failed to make full payment promptly of the agreed purchase price for 289 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate commerce from 26 sellers, in the total amount of \$1,241,848.35.

Conclusions

Respondent admits the jurisdictional allegations in paragraph II of the Complaint and specifically admits that the Secretary has jurisdiction in this matter, and neither admits nor denies the remaining allegations of the Complaint. Respondent waives oral hearing and further procedure, and consents to the entry of the following order.

Order


Respondent has committed willful, flagrant and repeated violations of section 2(4) of the Act (7 U.S.C. 499b(4)), and the facts and circumstances of the violations shall be published.

This order shall become final upon issuance.

Copies of this order shall be served upon the parties.

Done at Washington, D.C.


this 2nd of March, 2010



Administrative Law Judge

For Respondent


John J. Sklarz
for Phillis Tomato & Produce Corp.

For Complainant


Robert C. Keeney
Deputy Administrator
Fruit and Vegetable Programs
Agricultural Marketing Service


Charles L. Kendall, Esq.
Attorney for Complainant