

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

PACA Docket No. D-09-0156

In re: MEXI PRODUCTS, INC.

Respondent

DEFAULT DECISION AND ORDER

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 July 27, 2009, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleged that the Respondent Mexi Products, Inc. willfully, flagrantly and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)) during the period July 10, 2004, to March 16, 2008, by failing to make full payment promptly to six sellers for the agreed purchases prices, or balances thereof, in the total amount of \$325,636.85 for 122 lots of perishable agricultural commodities that Respondent purchased, received and accepted in the course of interstate and foreign commerce.

A copy of the Complaint was sent to Respondent by certified mail on July 28, 2009, and it was returned to the Hearing Clerk as “unclaimed” on August 27, 2009. The Hearing Clerk re-mailed the Complaint using ordinary mail on August 31, 2009 pursuant to the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.) (Rules of

Practice). That mailing by ordinary mail is deemed to constitute service on Respondent pursuant to section 1.147(c) of the Rules of Practice (7 C.F.R. § 1.147(c)). In addition, Complainant has shown that Respondent's owners, officers and directors received actual notice of the Complaint at their home address on August 28, 2009.

Respondent's Counsel, Michael Radzilowsky, filed a Notice of Bankruptcy Case Filing in this matter, suggesting that this proceeding might be stayed by the bankruptcy proceeding. Such a suggestion is without merit as 11 U.S.C. § 362(b)(4) expressly provides that the automatic stay provisions do not extend to the actions of governmental units to enforce their police or regulatory powers. This includes disciplinary provisions under the PACA. *See, In re: Michigan Repacking and Produce Co.*, 64 Agric. Dec. 1182, 1184 (2005); *In re: Diversified Food Export, Inc.*, 64 Agric. Dec. 1209, 1210-11 (2005); *Melvin Beene Produce Company v. Agricultural marketing Service*, 728 F. 2d. 347 (6th Cir. 1984); *In re: Fresh Approach, Inc.*, 49 B.R. 494 (Bkrptcy N.D. Tex 1985).

Respondent failed to answer the Complaint within the allotted time. No answer having been filed and the Complainant having filed an appropriate Motion for Default, the following Findings of Fact, Conclusions of Law and Answer will be entered.

Findings of Fact

1. Respondent Mexi Products, Inc., was a corporation incorporated and existing under the laws of Illinois. Respondent ceased operations March 14, 2008.
2. At all times material to this Decision, Respondent was licensed as a corporation under PACA License No. 20040929. This license was issued to Respondent on June 17, 2004, and the license terminated on June 17, 2008, pursuant to section 4(a) of the PACA (7 U.S.C. § 499a(a)) when Respondent failed to pay the annual renewal fee.

3. As more fully set forth in the Complaint, during the period July 10, 2004, to March 16, 2008, Respondent failed to make full payment promptly to six sellers for the agreed purchase prices, or balances thereof, in the total amount of \$325,636.85 for 122 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate or foreign commerce.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent's failure to make full payment promptly with respect to the six sellers for the agreed purchase prices, or balances thereof, in the total amount of \$325,636.85 for 122 lots of perishable agricultural commodities, which is described in Finding of Fact 3 above, constitutes willful, flagrant, and repeated violations of Section 2(4) of the PACA (7 U.S.C. §499b(4)), and the facts and circumstances of the violations shall be published.
3. Pursuant to the Rules of Practice, this Decision will become final without further proceedings 35 days after it is served unless a party to the proceeding appeals the Decision to the Secretary 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 of this Default Decision and Order shall be served upon the parties.

Done at Washington, D.C.
May 3, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge

Copies to: Jonathan Gordy, Esquire
Michael Radzilowsky, Esquire

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