

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

PACA Docket No. D-09-0037

In re: J & N PRODUCE, 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.*; hereinafter “PACA” or the “Act”), instituted by a Complaint filed on April 6, 2009 by the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (hereinafter “Complainant”). The Complaint alleges that during the period February 14, 2005, through October 2, 2005, J & N Produce, Inc., (hereinafter “Respondent”), failed to make full payment promptly to 20 sellers of the agreed purchase prices in the amount of \$256,824.10 for 589 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate commerce.

A copy of the Complaint was sent to Respondent’s principals, Messrs. Joseph Ciolino and Nagi G. Habib, by certified mail on April 6, 2009.¹ The Complaint advised Respondent that an answer must be filed with the Hearing Clerk within 20 days after receipt of the

¹ The Complaint was delivered to Mr. Ciolino on April 9, 2009. The Complaint was delivered to Mr. Habib on April 10, 2009.

complaint, and that “[f]ailure to file an answer shall constitute an admission of all the material allegations of this Complaint . . .” (Complaint at 3).

In addition, the letter from the Hearing Clerk serving a copy of the Complaint on Respondent expressly and accurately advised Respondent of the effect of failure to file an answer or plead specifically to any allegation of the Complaint. After Respondent failed to answer the Complaint within 20 days, the Hearing Clerk notified Respondent by a letter dated May 27, 2009, that an answer had not been timely filed.

On June 2, 2009, Nagi G. Habib filed a response; however, the material filed was not within the time allotted in the Rules of Practice and failed to plead specifically to any of the allegations of the Complaint as required by Section 1.136(b) of the Rules of Practice, 7 C.F.R. §1.136(b). The matter is now before me as the Complainant has filed a motion for the issuance of a Decision Without Hearing by Reason of Default. The Respondent was afforded an opportunity to respond and no response was received within the time specified.

Accordingly, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Respondent is a corporation incorporated and existing under the laws of Michigan. Its business and mailing address was 261 Russell Street, Detroit, Michigan, 48207-2613. Respondent ceased operations May 1, 2006. The mailing addresses of Respondent’s principals’, their home addresses, are on file with the Hearing Clerk’s Office, United States Department of Agriculture.
2. At all times material herein, Respondent was licensed or operating subject to license

under the provisions of the PACA. License number 2002-1177 was issued to Respondent on July 2, 2002. This license terminated on July 2, 2005, 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. Respondent, during the period February 14, 2005, through October 2, 2005, failed to make full payment promptly to 20 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$256,824.10 for 589 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of, or in contemplation of, interstate and 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 589 lots of perishable agricultural commodities set forth 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)).

Order

1. A finding is made that Respondent has committed willful, flagrant and repeated violations of section 2 of the Act (7 U.S.C. § 499b (4)), and the facts and circumstances of the violations shall be published.
2. Pursuant to the Rules of Practice, 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, 1.145).

Copies of this Decision and Order will be served upon the parties by the Hearing Clerk.

Done at Washington, D.C.
July 9, 2010

PETER M. DAVENPORT
Chief Administrative Law Judge

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