

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

PACA Docket No. D-09-0017

In re: TANIKKA WATFORD;
TANIKKA WATFORD and
LATISHA WATFORD d/b/a
SOUTHERN SOLUTIONS PRODUCE, LLC.,

Respondents

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”), instituted by a Complaint filed on October 29, 2008, by the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (“Complainant”) alleging that Tanikka Watford (hereinafter “Respondent T. Watford”) and LaTisha Watford (hereinafter “Respondent L. Watford”) d/b/a Southern Solutions Produce, LLC (hereinafter “Respondents”) have willfully violated the PACA.

The Complaint alleged that Respondents willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) during the period of December 18, 2005 through February 18, 2006, by failing to make full payment promptly to eight sellers of the agreed purchase prices in the total amount of \$365,637.74 for 30 lots of perishable agricultural commodities, which they purchased, received, and accepted in the course of interstate and foreign commerce. Complainant has now filed a motion for a decision based on admissions pursuant to section 1.139 of the Rules of Practice Governing Formal Adjudicatory Proceedings

Instituted by the Secretary Under Various Statutes (“Rules of Practice”). *See* 7 C.F.R. § 1.139.

The Complaint was served on Respondent T. Watford on November 8, 2008. Respondents filed, an “Answer” on December 1, 2008. The Answer generally denied the allegations of paragraph III of the Complaint pertaining to their failure to make full payment promptly. Respondents’ Answer contained an explanation for non-performance of their contractual duties, but at no time did the Answer specifically deny any of the allegations listed in paragraph III of the Complaint. (Answer ¶ III.) The Answer also generally denied the allegations listed in paragraph IV of the Complaint regarding the bankruptcy filing and stated that “the amounts on the Schedule F [were] prepared by our counsel based off invoices obtained from the sellers.” (Answer ¶ IV.)¹

On February 24, 2006, Respondents filed a Voluntary Petition under Chapter 7, in the U.S. Bankruptcy Court for the Middle District of North Carolina, designated as Case No. 06-10185. Complainant has now filed a “Motion for a Decision without Hearing Based on Admissions.” In their bankruptcy proceeding, Respondents admitted that they owed \$381,700.60 to the eight sellers of produce listed in the Complaint. Bankruptcy documents are judicially noticed in proceedings before the Secretary. *See, e.g., In re: Five Star Food Distributors*, 56 Agric. Dec. 880, 893 (1997). Appendix A, attached and incorporated herein by reference, compares the amounts alleged to be due in the Complaint to the amounts admitted by Respondents in their Bankruptcy Schedule F.

The Department’s policy with respect to admissions in PACA disciplinary cases in which

¹ As the Respondent's *pro se* Answer failed to allege that it would make full payment within 120 days of December 1, 2008, it must be considered a “no pay” case. Moreover, there is no indication that any payment has been made which might have converted the case to a “slow pay” as opposed to a “no pay” case.

a respondent is alleged to have failed to make full payment promptly for produce purchases is as follows:

In any PACA disciplinary proceeding in which it is alleged that a respondent has failed to pay in accordance with the PACA and respondent admits the material allegations in the complaint and makes no assertion that the respondent has achieved full compliance or will achieve full compliance with the PACA within 120 days after the complaint was served on the respondent, 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. *In re Furr’s Supermarkets Inc.*, 62 Agric. Dec. 385, 386 (2003) (citing *In re Scamcorp, Inc.*, 57 Agric. Dec. 527, 549 (1998)).

In this instance, Respondents have made an admission in a bankruptcy proceeding that they have failed to pay \$381,700.60 to the same produce creditors named in the Complaint. Respondents have failed to pay more than a *de minimis* amount for produce in violation of section 2(4) of the PACA, and they have not asserted that they will achieve full compliance with the PACA by making full payment within 120 days of the service of the complaint. This is a “no-pay” case.

The appropriate sanction in a “no-pay” case is license revocation, or where there is no longer any license to revoke, as is the case here, where Respondents’ license has terminated, the appropriate sanction is publication of the facts and circumstances of the violations. *See In re Furr’s Supermarkets Inc.*, 62 Agric. Dec. at 386-87. Because there can be no debate over the appropriate sanction, a decision can be entered in this case without hearing or further procedure based on the admitted facts. *See* 7 C.F.R. § 1.139.² Complainant's motion will be granted and the following decision is issued in the disciplinary case against Respondents without further

² A hearing is only required where an issue of material fact is joined by the pleadings. *See* 7 C.F.R. § 1.141(b); *Veg. Mix, Inc. v. U. S. Dep’t of Agriculture*, 832 F.2d 601, 607 (D.C. Cir. 1987).

proceeding or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. §1.139).

Findings of Fact

1. Respondents are a limited liability company organized and existing under the laws of the State of North Carolina. Respondents' business address was 1007 Timbers Drive, Hillsborough, North Carolina 27278. Both Respondents T. Watford and L. Watford's mailing addresses are home addresses and are on file with the Hearing Clerk's Office, United States Department of Agriculture.

2. Respondent T. Watford was licensed or operating subject to license under the provisions of the PACA. License number 20050448 was issued to Respondent T. Watford on February 22, 2005.

3. At all times material herein, Respondents were operating under Respondent T. Watford's license. This license terminated on March 24, 2006, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d (a)), when Respondents failed to pay the required annual renewal fee.

4. During the period of December 18, 2005, through February 18, 2006, Respondents failed to make full payment promptly to eight (8) sellers of the agreed purchase prices in the total amount of \$365,637.74 for 30 lots of perishable agricultural commodities, which Respondents purchased, received, and accepted in the course of interstate and foreign commerce.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Respondents' failure to make full payment promptly with respect to the 30 transactions set forth in Finding of Fact 3 above, constitutes willful, flagrant and repeated violations of section 2(4) of the Act (7 U.S.C. § 499b(4)).

Order

1. The facts and circumstances of the above violations shall be published.
2. 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 Decision and Order shall be served upon the parties.

Done at Washington, D.C.
July 21, 2010

PETER M. DAVENPORT
Chief Administrative Law Judge

Appendix A

COMPARISON OF COMPLAINT AND BANKRUPTCY SCHEDULE F

Produce Seller Listed in Complaint	Amount Alleged in Complaint to be Past Due and Unpaid	Amount Admitted in Respondents' Bankruptcy Schedule F as Undisputed
Taylor Farms Maryland, Inc.	\$7,107.40	\$5,555.50
G. Cefalu & Bro., Inc	\$54,362.00	\$55,866.50
ExaWorld Biz	\$10,109.05	\$17,675.00
Channel Imports	\$7,872.00	\$10,000.00
KGB International, Inc.	\$33,345.86	\$38,980.85
South Mill Dist. LP	\$74,945.90	\$76,000.00
Armstrong Marketing	\$104,746.35	\$104,746.35
Cornucopia Produce Co.	\$73,149.18	\$72,876.40
Totals	\$365,637.74	\$381,700.60