

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

PACA Docket No. D-10-0032

In re: O'LIPPI & CO., 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.*) (the "PACA"), instituted by a Complaint filed on November 12, 2009, by the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (the "Complainant"). The Complaint alleges that during the period September 21, 2008 through January 15, 2009, O'Lippi & Co., Inc. (the "Respondent"), failed to make full payment promptly to nine sellers for 131 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of or in contemplation of interstate and foreign commerce.

A copy of the Complaint was served on Respondent, by certified mail on December 7, 2009. Respondent failed to file an answer as prescribed by section 1.136 of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136) (the "Rules of Practice"). Pursuant to section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)), Respondent's failure to file an answer constitutes an admission of the allegations in the Complaint. The time for filing an answer having run, and upon the motion of Complainant, the following Findings of Fact, Conclusions of Law and Order will be entered 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 California. Respondent's business and mailing address was in San Francisco, California, however, Respondent ceased business operations on January 30, 2009.
2. At all times material to the allegations in the Complaint, Respondent was licensed as a corporation under the PACA. PACA License No. 1994-0247 was issued to Respondent on November 12, 1993. The license terminated on November 12, 2009, 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, on or about the dates and in the transactions set forth below, failed to make full payment promptly to nine sellers of the agreed purchase prices, or balances thereof, in the total amount of \$639,574.36 for 131 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of or in contemplation of interstate and foreign commerce. This amount remained unpaid as of the date of the Complaint.

	<b>Produce Seller and Origin</b>	<b>Number Of Lots</b>	<b>Commodities</b>	<b>Date(s) Accepted</b>	<b>Date(s) Payments Due</b>	<b>Amount Past Due &amp; Unpaid</b>
1	Dole Fresh Fruit Company Charlotte, NC Origin: Peru, Ecuador	53	Bananas	09/21/2008 to 01/7/2009	09/26/2008 to 01/12/2009	\$514,142.08
2	John Demartini Co., Inc. San Francisco, CA Origin: WA, TX	17	Various Fruits	10/17/2008 to 01/14/2009	11/07/2008 to 02/04/2009	\$3,486.50
3	Splendid Products Burlingame, CA Origin: Peru, Ecuador, TX	27	Mangoes	11/07/2008 to 01/21/2009	11/28/2008 to 02/11/2009	\$25,553.00
4	Jacobs Malcolm & Burt San Francisco, CA Origin: OR, WA	13	Various Fruits	12/02/2008 to 01/16/2009	12/12/2008 to 01/26/2009	\$4,182.00 <sup>1</sup>

<sup>1</sup> The amount of debt admitted to in bankruptcy Schedule F is \$3,544.00. The amount herein alleged reflects the aggregate owed per the invoices collected from the produce seller.

	<b>Produce Seller and Origin</b>	<b>Number Of Lots</b>	<b>Commodities</b>	<b>Date(s) Accepted</b>	<b>Date(s) Payments Due</b>	<b>Amount Past Due &amp; Unpaid</b>
5	Freska Produce International, LLC Oxnard, CA Origin: Ecuador	2	Mangoes	12/11/2008 to 01/07/2009	12/21/2008 to 01/17/2009	\$3,060.00
6	Pacific Fruit Inc. Los Angeles, CA Origin: Ecuador	8	Bananas	12/17/2008 to 01/08/2009	12/27/2008 to 01/18/2008	\$73,148.78
7	Crown Pacific International, LLC Hilo, HI Origin: HI	3	Papayas	11/30/2008 to 12/24/2008	12/30/2008 to 01/23/2009	\$4,147.00
8	Twin Peaks Distributing, Inc. South San Francisco, CA Origin: Chile, TX	5	Various Fruits and Vegetables	12/15/2008 to 01/15/2009	01/05/2009 to 02/05/2009	\$21,259.50
9	Parkview Produce, Inc. San Bruno, CA Origin: Unknown	3	Bananas	01/08/2009 to 01/13/2009	01/29/2009 to 02/03/2009	\$4,575.00

4. On February 4, 2009, Respondent filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. § 1101 et seq. ) in the U.S. Bankruptcy Court, Northern District of California, San Francisco Division, San Francisco, California. The bankruptcy petition was designated case number 3:09-cv-00450-WHA. Respondent, in bankruptcy pleadings and in bankruptcy Schedule F (“Schedule F”), admitted that all nine sellers, listed supra, hold unsecured claims for unpaid debts. Respondent admitted in its bankruptcy filing in Schedule F that it owes approximately \$711,861.00 to the nine sellers. The amounts enumerated in Schedule F for unpaid produce debts are greater than or equal to the amounts alleged in the Complaint unless otherwise noted.

### **Conclusions of Law**

1. The Secretary has jurisdiction in this matter.

2. Respondent's failure to make full payment promptly to nine sellers in the total amount of \$639,574.36 for 131 lots of perishable agricultural commodities as stated in Finding of Fact 3, constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), for which the order below is issued.

**Order**

1. Respondent is found to have committed 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.

2. This Order shall take effect on the 11th day after this decision becomes final.

3. Pursuant to the Rules of Practice governing procedures under the PACA, 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, 1.145).

Copies of this Decision and Order shall be served upon the parties.

August 24, 2010

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Peter M. Davenport  
Chief Administrative Law Judge