

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

PACA Docket No. D-09-0075

In re: TCRS, Inc. d/b/a  
East Tennessee Produce,

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 March 25, 2009, by the Acting Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (hereinafter “Complainant”). The Complaint alleges that during the period March 5, 2007, through September 14, 2007, TCRS Inc., doing business as East Tennessee Produce, (hereinafter “Respondent”), failed to make full payment promptly to 25 sellers of the agreed purchase prices in the amount of \$540,689.04 for 120 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 principal, Timothy Roper, by certified mail on April 8, 2009, and it was returned to the Hearing Clerk on May 20, 2009, as “unclaimed.” Accordingly, pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151; hereinafter “Rules of Practice”), on May 20, 2009, the Hearing Clerk re-mailed the Complaint using regular mail. That mailing by regular mail is deemed to constitute service on Respondent

pursuant to section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)). Respondent has not answered the Complaint. The time for filing an answer having run, and upon the motion of Complainant for the issuance of a Decision Without Hearing by Reason of Default, the following decision and order is issued without further procedure pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

### **Findings of Fact**

1. TCRS, Inc. d/b/a East Tennessee Produce (herein “Respondent”) was a corporation organized and existing under the laws of Kentucky with a business and mailing address in Powell, Tennessee. Respondent ceased operations on August 25, 2007. Respondent’s mailing address is a home address and is 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 20010760 was issued to Respondent on March 20, 2001. This license terminated on March 20, 2008, 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 March 5, 2007, through September 14, 2007, failed to make full payment promptly to 25 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$540,689.04 for 120 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of, or in contemplation of, interstate and foreign commerce.
4. On September 4, 2007, Respondent filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code (7 U.S.C. §701 et seq.) in the United States Bankruptcy Court for the Eastern District of Tennessee. The petition was designated Case No. 07-32864.

5. Respondent, in bankruptcy pleadings and in bankruptcy schedule F, admitted that all 25 sellers listed in paragraph III of the Complaint hold unsecured claims for unpaid produce debt. Respondent's bankruptcy pleadings admit that it owes \$628,125.67 to the 25 sellers, more than the amount alleged in the Complaint.<sup>1</sup>

### **Conclusions Of Law**

1. The Secretary has jurisdiction in this matter.
2. Respondent's failure to make full payment promptly with respect to the 120 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).

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<sup>1</sup> Timothy Earl Roper (herein "Roper") was the 100% stockholder of Respondent at all times material herein. On September 27, 2007, numerous parties filed PACA Trust claims against Roper in the U.S. District Court for the Eastern District of Tennessee. The complaint was designated Case No. 07-00374. On February 29, 2008, Roper filed a personal Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Eastern District of Tennessee, bearing Bankruptcy Case No. 08-30852. Roper's bankruptcy pleading admitted that it owed \$776,472.46 to the same 25 sellers listed in paragraph III of the Complaint, which is more than the amount alleged in the complaint and more than the amount included in Respondent's Schedule F.

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

Clerk.

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Peter M. Davenport  
Chief Administrative Law Judge

August 26, 2010