

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-10-0118
)	
Tanimura Distributing, Inc.,)	
)	
Respondent)	Decision and Order by Reason of Default

1. The Complaint, filed on February 22, 2010, alleged that the Respondent, Tanimura Distributing, Inc., during November 7, 2007 through August 18, 2008, committed willful, repeated, and flagrant violations of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (frequently herein “PACA” or “Act”).

Parties and Counsel

2. The Complainant is the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (herein frequently “AMS” or “Complainant”). AMS is represented by Charles E. Spicknall, Esq., with the Office of the General Counsel (Trade Practices Division), United States Department of Agriculture, South Building, Room 2318, Stop 1413, 1400 Independence Avenue S.W., Washington, D.C. 20250-1413.

3. The Respondent Tanimura Distributing, Inc. (herein frequently “Tanimura” or “Respondent”) has failed to appear. Respondent is incorporated under the laws of the State of California.

Procedural History

4. AMS’s Motion for Decision Without Hearing by Reason of Default, filed June 2, 2010, is before me. Respondent Tanimura was served on July 8, 2010, with a copy of that Motion and a copy of the proposed Decision and has failed to respond.

5. Regarding service of the Complaint, on March 31, 2010, Respondent Tanimura was served with a copy of the Complaint, together with a copy of the Hearing Clerk’s notice letter and a copy of the Rules of Practice. *See* 7 C.F.R. §1.130 *et seq.*, especially 7 C.F.R. §1.147(c)(1). A copy of the Complaint was sent by certified mail to Respondent’s registered agent for service of process in California on February 22, 2010. A corporation’s registered agent is a “representative of record” for purposes of service of process under the Rules of Practice. *In re: Fresh America Corp.*, 2007 WL 3170294 (USDA), at *2. The Complaint was returned to the Hearing Clerk marked by the postal service as “unclaimed.” In accordance with section 1.147 of the USDA’s Rules of Practice, (7 C.F.R. § 1.147(c)(1)), the Hearing Clerk resent the Complaint to Respondent’s registered agent by regular mail on March 31, 2010. By operation of the Rules of Practice, the Complaint was served as of that date.

6. The Respondent’s answer was due to be filed within 20 days after service, according to section 1.136(a) of the Rules of Practice. 7 C.F.R. § 1.136(a). The time for filing an answer to the Complaint expired on April 20, 2010. The Respondent failed to

file an answer, so the Respondent is in default, pursuant to section 1.136(c) of the Rules of Practice. 7 C.F.R. § 1.136(c).

7. Failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. §1.136(c). Failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material facts alleged in the Complaint, which are admitted by the Respondent's default, are adopted and set forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice. 7 C.F.R. § 1.139.

Findings of Fact

8. Respondent Tanimura Distributing, Inc., is incorporated and existing under the laws of the State of California. Respondent ceased operations in August of 2008. Prior to ceasing operations, Respondent's business and mailing address was 5301 Rivergrade Road, Irwindale, California 91706-1347. Respondent's agent for service of process, on file with the Secretary of State of California is: A. Caballa, 1700 E. Bay Street, Los Angeles, CA 90021.

9. At all times material to this Decision, Respondent was licensed as a corporation under the PACA. License number 1994-0549 was issued to Respondent on January 25, 1994. The license terminated on January 25, 2009, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the annual renewal fee.

10. As more fully set forth in the Complaint, during the period of November 7, 2007, through August 18, 2008, Respondent failed to make full payment promptly to sixty-two sellers for the agreed purchase prices, or balances thereof, in the total amount of

\$3,595,217.41 for 759 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in the course of interstate and foreign commerce.

11. On August 13, 2008, Respondent filed for protection under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Central District of California, Los Angeles Division, Case No. 2:08-bk-22644-TD. Respondent admitted, in the schedules of assets and liabilities filed in conjunction with its bankruptcy petition, that the produce sellers listed in the Complaint held unsecured claims totaling \$2,673,570.63.

Conclusions

12. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.

13. Respondent, Tanimura Distributing, Inc., during November 7, 2007 through August 18, 2008, failed to make full payment promptly to 62 sellers in the total amount of \$3,595,217.41 for 759 lots of perishable agricultural commodities, as described above in paragraph 10, and thereby committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

14. Respondent Tanimura Distributing, Inc., is found to have committed willful, repeated, and flagrant violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)). The facts and circumstances of the violations shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Finality

15. This Decision and Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145 *see* enclosed Appendix A).

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 31st day of August 2010

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 1031, South Building
Washington, D.C. 20250-9203
Phone: 202-720-4443
Fax: 202-720-9776