

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

USDA
OALJ/OHC

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Docket No. 14-0165 PACA-D

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In re:

SUPREME CUTS, LLC,

Respondent.

DECISION AND ORDER ON THE RECORD

The instant matter involves a complaint filed by the Agricultural Marketing Service of the United States Department of Agriculture (“AMS”; “USDA”; “Complainant”) against Supreme Cuts, LLC (“Respondent”) alleging violations of the Perishable Agricultural Commodities Act, 1930, as amended, 7 U.S.C. §499a et seq. (“PACA”; “the Act”). The complaint alleged that Respondent failed to make full payment promptly in the aggregate amount of \$385,683.29 to seventeen (17) sellers of the agreed purchase prices for 75 lots of perishable agricultural commodities during the period of August, 201, through January, 2014.

I. PROCEDURAL HISTORY

On August 11, 2014, Complainant filed a Complaint with the Hearing Clerk for the Office of Administrative Law Judges (“OALJ”) for USDA (“Hearing Clerk”) against Respondent alleging violations of the PACA. On September 18, 2014, Respondent filed an Answer. On December 9, 2014, the parties filed a consent decision, which was signed by Chief Administrative Law Judge Peter Davenport (ret.).

On June 9, 2015, Respondent filed a motion to stay the actions that were agreed upon in the consent decision. On June 10, 2015, Respondent filed a motion for the entry of a Decision and Order pursuant to Respondent’s failure to comply with the consent decision.

On June 15, 2015, I reassigned the matter to myself and denied the motion to stay the provisions of the consent decision. On July 31, 2015, substitute counsel for Complainant entered an appearance and filed a status report, requesting entry of the decision. Respondent did not file a response to Complainant's motion or status report¹. This Decision and Order is issued on unopposed motion of Complainant, and incorporates all of the pleadings of the parties and all other evidence of record.

II. FINDINGS OF FACT & CONCLUSIONS OF LAW

A. Discussion

The PACA requires payment by a buyer within ten (10) days after the date on which produce is accepted. 7 C.F.R. § 46.2(aa)(5). The regulations allow the use of different payment terms so long as those terms are reduced to writing prior to entering into the transaction. 7 C.F.R. § 46.2(aa)(11).

The consent decision signed by Respondent concluded that Respondent had failed to make full payment promptly to 17 sellers of the agreed purchase prices of perishable agricultural commodities. The consent decision further found that Respondent's failure to make full payment promptly constituted willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

The consent decision issued a finding that as the result of Respondent's willful, flagrant, and repeated violations of the PACA, Respondent's PACA license would be revoked; however, the revocation would not be effective if Respondent paid the produce sellers identified in Appendix A to the Complaint, and satisfied the amounts owed to each in full, within six months (180 days) of the effective date of the Consent Decision and Order.

¹ The reassignment was not made in the Hearing Clerk's electronic filing system, and I thereafter failed to monitor the progress of this case.

The consent decision also imposed a civil penalty of \$75,000.00 payable within the 180 days.

According to the consent decision, the PACA Branch of AMS would be the final arbiter of whether full payment, as contemplated by the terms of the consent decision, was made. Respondent is obliged to demonstrate that full payment had been made. Respondent agreed that in the event that Respondent failed to make full payment within the terms of the consent decision, then Respondent's license under the PACA would be revoked without further proceeding, other than notice to the Office of Administrative Law Judges that Respondent had failed to meet the terms of the consent decision. Respondent expressly waived all further procedure in the matter following the Consent Decision and Order.

As of the date of Complainant's motion filed on June 10, 2015, Complainant had determined, and Respondent had admitted, that the payment of the agreed civil penalty had not been made. Therefore, revocation of Respondent's PACA license and publication of the facts and circumstances of Respondent's violations are appropriate sanctions.

B. Findings of Fact

1. Respondent is or was a corporation organized and existing under the laws of the state of New Jersey, with a business and mailing address in Mahwah, New Jersey.
2. At all times material hereto, Respondent was licensed under and operated subject to the provisions of the PACA, under license number ****0940, issued on December 5, 2001.
3. Respondent's license was subject to renewal on December 5, 2014².
4. During the period from August, 2011 through January, 2014, on or about the dates identifying the transactions set forth in Appendix A to the complaint filed in the instant

² It is unclear if Respondent renewed its license at that time. If so, then the next date for renewal is December 5, 2015.

matter, Respondent failed to make full payment promptly of the agreed purchase prices, or the balances thereof, in the aggregate of \$385,683.29 for 75 lots of perishable agricultural commodities purchased, received, and accepted by Respondent in interstate and foreign commerce from 17 sellers.

5. In a consent decision entered on December 9, 2014, Respondent agreed to make full payment of any balance due to the sellers, and agreed to pay a civil penalty in the amount of \$75,000.00.
6. As of the date of the consent decision, Respondent had paid the full amount owed to 12 of the 17 sellers identified in Appendix A of the complaint.
7. As of the date of Complainant's motion, Respondent had paid the remaining five (5) sellers listed in Appendix A, but had failed to pay the civil penalty.

C. Conclusions of Law

Respondent's failure to make full payment promptly of the agreed purchase prices in the total amount for perishable agricultural commodities purchased, received, and accepted in interstate and foreign commerce constitutes willful, flagrant and repeated violations of Section 2(4) of the PACA (7 U.S.C. § 499b(4)).

ORDER

Respondent Supreme Cuts, LLC willfully, flagrantly, and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)).

The PACA license issued to Respondent Supreme Cuts, LLC is hereby revoked.


The facts and circumstances underlying Respondent's violations shall be published.

This Order shall take effect on the eleventh (11th) day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision and Order shall 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 and 1.145).

The Hearing Clerk shall serve copies of this Decision and Order upon the parties.

So ORDERED this 21st day of October, 2015, in Washington, D.C.


Janice K. Bullard
Administrative Law Judge