

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA Docket No. D-10-0220
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Jard Marketing Corporation,)
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Respondent)

Consent Decision and Order

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (PACA). The complaint filed herein, on April 13, 2010, alleged that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA by failing to make full payment promptly to 25 sellers of the agreed purchase prices in the total amount of \$1,374,930.63 for 352 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce during the period of February 3, 2008 through April 26, 2009.

The complaint sought the issuance of an order finding that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA, and publication thereof.¹

The complaint was served upon Respondent, and Respondent submitted an answer in which it generally denied the allegations of the complaint pertaining to its failure to make full payment promptly.

¹ Complainant sought publication of the facts and circumstances surrounding Respondent's PACA violations, rather than revocation of Respondent's PACA license, as Respondent's PACA license terminated on February 14, 2010, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the annual required fee.

The parties have now agreed to the entry of a Consent Decision and Order as set forth herein. Therefore, this Consent Decision and Order is entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.; hereinafter “Rules of Practice”) applicable to this proceeding (7 C.F.R. §1.138).

Findings of Fact

1. Respondent is a corporation organized and existing under the laws of the state of Massachusetts. Its mailing address was 271 Glenn Street, Lawrence, Massachusetts.

Respondent ceased business operations on April 4, 2009.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. Pursuant to the licensing provisions of the PACA, license number 20080489 was issued to Respondent on February 14, 2008. This license terminated on February 14, 2010, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual fee.

3. During the period February 3, 2008 through April 26, 2009, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 25 sellers, 352 lots of perishable agricultural commodities, and failed to make full payment promptly of the agreed purchase prices, in the total amount of \$1,374,930.63.

Conclusions

Respondent’s failure to make full payment promptly to 25 sellers of the agreed purchase prices of the perishable agricultural commodities described in Finding of Fact paragraph 3 above constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. §

499b(4)).

Order

A finding is issued that Respondent has engaged in willful, flagrant, and repeated violations of the PACA, and the facts and circumstances of the violation shall be published, in lieu of revocation.² However, this finding and the publication of this finding shall be held in abeyance so long as Respondent pays the produce sellers listed in the Complaint and satisfies the amounts owed to each, as stated in the Complaint and in Finding of Fact paragraph 3 above, in full, within six months (180 days) of the effective date of this Consent Decision and Order.

The PACA Branch of the Agricultural Marketing Service shall be the final arbiter of whether full payment to the produce sellers in the amounts listed in the Complaint has been paid. It will be Respondent's obligation to demonstrate that full payment as described above has been made. If full payment is made within the 180 days stated above, the finding of willful, flagrant, and repeated violations will be permanently abated, and no order of publication of the facts and circumstance of the violations will be issued in this case.

Further, once full payment as described above is made, Respondent will pay a civil penalty in the amount of \$55,000, within the 180 day time period from the date of the final and effective date of this Consent Decision and Order. Payment shall be by certified check or bank check made payable to the "United States Treasury" and delivered to the United States Department of Agriculture, PACA Branch—Attention: Trade Practices Section, 1400 Independence Avenue, S.W. Room 2095 South Bldg., Washington, D.C. 20250.

If full payment of the sellers listed in the Complaint in the amounts listed in the

² See *Error! Main Document Only. In re: Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 547 (1998).

Complaint, as described in Finding of Fact paragraph 3 above, and subsequent payment of the \$55,000 civil penalty is not made in the manner described above within 180 days of the effective date of the Consent Decision and Order, then the finding of willful, flagrant, and repeated violations, as stated in the "Conclusions" section above, and the publication of the facts and circumstances of the violation, will no longer be held in abeyance and will be made without further proceeding, other than a Motion from Complainant requesting that the finding and order no longer be held in abeyance. Any employment sanctions attendant in this case will take effect upon that finding and order of publication.

Respondent waives all further proceeding in this matter.

This order shall become final upon issuance.

Copies hereof shall be served upon parties.

Done at Washington, D.C.

this 11 day of APR, 2011

[Redacted Signature]

Jill S. Clifton
Administrative Law Judge

[Redacted Signature]

Robert C. Keeney
Deputy Administrator
Fruit and Vegetable Programs
Agricultural Marketing Service

4-8-11
Date signed

[Redacted Signature]

Christopher Young, Esq.
Attorney for Complainant

3-18-11

[Redacted Signature]

Brian P. Sylvester, Esq.
Attorney for Complainant

3-18-11

Date signed

[Redacted Signature]

Paul T. Gentile, Esq.
Attorney for Respondent

3-30-11
Date Signed

Sign: [Redacted Signature]

Print: Joseph C. Gangi
For Respondent - President

3-30-11
Date Signed