

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

JUL 11 2011 4:03

In re:)
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MS Grand, Inc.,)
)
)
Respondent)

PACA Docket No. D-11-0296

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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 Amended Complaint filed herein (the “Amended PACA Complaint”), on July 18, 2011, alleged that MS Grand, Inc., the respondent herein (the “Respondent”) had committed willful, flagrant and repeated violations of section 2(4) of the PACA by failing to make full payment promptly to 62 sellers (the “PACA Creditors”) of the agreed purchase prices in the total amount of \$4,120,968.84 for 470 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce during the period of August 2009, through October 2010.

The Amended PACA Complaint sought the issuance of an order finding that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA, publication of the facts and circumstances of the violations, and revocation of Respondent’s PACA license.

The Amended PACA Complaint was served upon Respondent, and Respondent submitted a timely answer generally denying the allegations of the Amended PACA Complaint pertaining to its failure to make full payment promptly.

The parties have now agreed to the entry of this consent decision and order (the “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 Maryland. Its business mailing address is 4800 Walden Lane, Lanham, Maryland 20706-4884. The Respondent ceased selling produce on or about October 22, 2010.

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 20040308 was issued to Respondent on January 9, 2004. This license has been renewed annually pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), and is next subject to renewal on January 9, 2012.

3. During the period August 2009, through October 2010, Respondent purchased, received, and accepted, in interstate and foreign commerce, from the PACA Creditors, 470 lots of perishable agricultural commodities, and failed to make full payment promptly of the agreed purchase prices, in the total amount of \$4,120,968.84.

4. On October 19, 2010 (the “Petition Date”), Min Sik Kang and Man Sun Kang (collectively, the “Kangs”) filed with the United States Bankruptcy Court for the Eastern District of Virginia, Alexandria Division (the “Bankruptcy Court”), a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing the above-captioned chapter 11 case.

5. On October 19, 2010, MS Grand, Inc. (“MS Grand” and, together with the Kangs, the “Debtors”), which is wholly owned by the Kangs, filed for bankruptcy in the United States

Bankruptcy Court for the District of Maryland. On December 17, 2010, an order was entered transferring the MS Grand case to the Bankruptcy Court.

6. On or about March 23, 2011, the Bankruptcy Court entered the Final Amended Order for PACA Claims Procedure (the Final Amended Order for PACA Claims Procedure, including any subsequent amendments or modifications by agreement of the PACA Creditors and the Respondent or by appropriate order of the Bankruptcy Court, the “PACA Consent Order”), which provides, among other things, a “framework for entry of an orderly procedure to review, qualify, and satisfy any and all claims pursuant to the PACA, against MS Grand, and its principals Min Sik Kang and Man Sun Kang to maximize the recovery for all unpaid beneficiaries of the PACA trust, and to ensure the rights of all potential claimants are efficiently addressed.” The PACA Consent Order further provides numerous protections for the benefit of the PACA Creditors in the event that the Respondent defaults and fails to timely cure such default.

Conclusions

Respondent’s failure to make full payment promptly to the PACA Creditors 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 Respondent’s PACA license is revoked. However, this finding and the revocation of Respondent’s PACA license shall be held in abeyance and stayed so long as

Respondent complies with the terms of the PACA Consent Order. In the event that the PACA Consent Order, subsequent to the entry of this Consent Decision and Order, is amended or modified in any respect by agreement between the PACA Creditors and MS Grand or through appropriate order of the Bankruptcy Court, such modification or amendment shall not constitute a default under this Consent Decision and Order, so long as the modification includes a provision for full payment of the PACA Creditors' claims.

The PACA Division of the Agricultural Marketing Service shall be the final arbiter of whether the claims of the PACA Creditors have been satisfied (in accordance with the PACA Consent Order). In the event of a dispute, it will be Respondent's obligation to demonstrate that such claims have been satisfied. If the PACA Creditors' claims are satisfied pursuant to the PACA Consent Order, the finding of willful, flagrant, and repeated violations and the revocation of Respondent's PACA license will be permanently abated, and the Respondent's PACA license, at that time, shall be deemed reinstated and valid.

In the event that the PACA Creditors' claims are not satisfied pursuant to, and in accordance with, the PACA Consent Order, then the finding of willful, flagrant, and repeated violations, as stated in the "Conclusions" section above, and the revocation of Respondent's PACA license will no longer be held in abeyance or stayed, and will take effect without further proceeding, other than a Motion from Complainant requesting that the finding and order of revocation no longer be held in abeyance.

In the event that the Respondent defaults with respect to the monthly payments due pursuant to the PACA Consent Order, and such default is not timely cured pursuant to the PACA Consent Order, then the finding of willful, flagrant, and repeated violations, as stated in the

“Conclusions” section above, and the revocation of Respondent’s PACA license will no longer be held in abeyance and will take effect without further proceeding, other than a Motion from Complainant requesting that the finding and order of revocation no longer be held in abeyance. It will be at the discretion of the PACA Division and Complainant to file said motion at any time following the Respondent’s uncured default of the PACA Consent Order.

Any employment sanctions attendant in this disciplinary case will take effect upon a finding by the Administrative Law Judge of PACA violations as described above.

Respondent waives all further proceeding in this matter.

This Consent Decision and Order shall become final upon issuance.

Copies hereof shall be served upon parties.

Done at Washington, D.C.

this 11th day of January, 2011

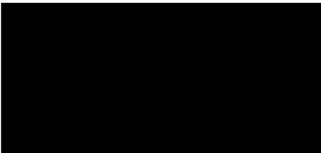


Peter M. Davenport
Chief Administrative Law Judge



Charles W. Parrott
Associate Deputy Administrator
Fruit and Vegetable Programs
Agricultural Marketing Service

1/5/12
Date signed



(with permission)
Christopher Young, Esq.
Attorney for Complainant

12/28/11
11/14/2011
Date signed

[Redacted]

/s/ Jonathan L. Gold
Jonathan L. Gold, Esq.
Attorney for Respondent/Examiner

12/21/2011
~~11/14/2011~~
Date Signed

[Redacted]

Print: Neil H. Donohue
For Respondent
Examiner Rev MS brand, Inc.

12/20/2011
Date Signed