

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0113

In re: Paul J. Macrie, Inc.,
Peter R. Macrie, Jr., and
John & Pete's Fresh Cut
Produce Concepts, LLC,

Respondents

Default Decision and Order

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agriculture Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*)(the "Act"), instituted by a Complaint and Notice to Show Cause and Request for Expedited Hearing filed on December 16, 2011, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint and Notice alleged that during the period June 19, 2009 through November 3, 2011, Corporate Respondent Paul J. Macrie, Inc., under the management, direction, and control of Individual Respondent Peter R. Macrie, Jr., failed to make full payment promptly of the agreed purchase price for 528 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate commerce from 33 sellers, in the total amount of \$1,294,592.35.

Copies of the Complaint and Notice were mailed by certified mail to the business address that Respondents hold in common, and were delivered on December 22, 2011. Respondents failed to answer the Complaint and Notice and on January 13, 2012, the Hearing Clerk advised

the Respondents that no Answer had been filed within the time allotted by the Rules of Practice and that they would be advised of further proceedings.

On January 17, 2012, I entered a Show Cause Order directing the parties to show cause if any there be why a Default Decision and Order should not be entered. The Complainant thereafter filed a Motion for Decision without Hearing by Reason of Default. On February 10, 2012 after the expiration of the time for filing a Response to the Show Cause Order but within the time allowed for filing an Answer to the Motion for Decision without Hearing by Reason of Default, the Hearing Clerk received a letter from Peter R. Macrie, Jr. in which he indicated that he “opposed” the allegations and requested more time in answering the allegations against him. Nothing further having been received from Mr. Macrie and the time for filing an Answer having long expired, upon motion of the Complainant for the issuance of a Default Order, the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.130 *et seq.*).

Findings of Fact

1. Corporate Respondent Paul J. Macrie, Inc., is a corporation organized and existing under the laws of the State of California. Its mailing address is in Hammonton, New Jersey.
2. At all times material to the Complaint herein, Corporate Respondent was licensed under the PACA. License Number 19662399 was issued to Corporate Respondent on April 6, 1966. This license terminated on April 6, 2011, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Corporate Respondent failed to pay the required annual renewal fee. Since that date, however, Corporate Respondent has continued to conduct business subject to the PACA.
3. At all times material to the Complaint herein, Corporate Respondent operated under the management, direction, and control of Individual Respondent Peter R. Macrie, Jr.

4. As set forth in paragraph III and specified in Appendix A of the Complaint and Notice, during the period June 19, 2009 through November 3, 2011, Corporate Respondent Paul J. Macrie, Inc., under the management, direction, and control of Individual Respondent Peter R. Macrie, Jr., failed to make full payment promptly of the agreed purchase price for 528 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate commerce from 33 sellers, in the total amount of \$1,294,592.35.

5. Respondent John & Pete's is a limited liability company organized and existing under the laws of the State of New Jersey. Its mailing address is in Hammonton, New Jersey.

6. Respondent John & Pete's filed an application for a PACA license on November 16, 2011. Individual Respondent Peter R. Macrie, Jr., was listed as the 51% owner of Respondent John & Pete's on its application (attached to the Complaint and Notice as Appendix B).

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Corporate Respondent's failure, under the management, direction, and control of Individual Respondent Peter R. Macrie, Jr., to make full payment promptly to 33 sellers in the total amount of \$1,294,592.35 for 528 lots of perishable agricultural commodities constitutes willful, repeated and flagrant violations of section 2(4) of the Act (7 U.S.C. § 499b(4)).

3. Respondent John & Pete's majority owner, Individual Respondent Peter R. Macrie, Jr., has engaged in practices of a character prohibited by the Act, which makes Respondent John & Pete's unfit to be licensed under the Act.

Order

1. Corporate Respondent, under the management, direction, and control of Individual Respondent Peter R. Macrie, Jr., has committed willful, flagrant and repeated violations of section 2(4) of the Act (7 U.S.C. 499b), and the facts and circumstances of the violations shall be published.
2. Respondent John & Pete's having been found unfit to be licensed under the Act, in that Respondent John & Pete's majority owner, Individual Respondent Peter R. Macrie, Jr., has engaged in practices of a character prohibited by the PACA, its application for license shall be and is refused.
3. This Order shall take effect on the 11th day after this Decision becomes final.
4. Pursuant to the Rules of Practice, this Decision will 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).

Copies hereof shall be served upon the parties.

March 13, 2012

Peter M. Davenport
Chief Administrative Law Judge