

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0047

In re: Sutton Fruit and Vegetable Company,
Respondent

Default Decision and Order

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.)(the Act or PACA), instituted by a Complaint filed on October 23, 2012, by the Associate Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA).

The Complaint filed by Complainant alleges that during the period May 3, 2011, through February 17, 2012 Respondent failed to make full payment promptly to 13 sellers of the agreed purchase prices in the total amount of \$585,516.69 for 103 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate and foreign commerce.

The Complaint requested that the Administrative Law Judge find that Respondent willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)), that Respondent's license be revoked, and that the facts and circumstances of the violations be published.

The Complaint was sent by the Hearing Clerk to Respondent's to the corporation's principals by certified mail.¹

By letter dated November 26, 2012, the Respondent was advised that an Answer had not been timely received and that it would be informed of further proceedings. On December 5, 2012, I entered an Order directing the parties to show cause why a Default Decision and Order should not be entered. The Complainant responded on December 18, 2012 and moved for the default.

By letter dated January 3, 2013, Keith Sutton communicated with the Hearing Clerk providing the company's background, the problems that it had experienced with their banking relations and land that it had leased, and the ensuing litigation.

As Respondent failed to answer the Complaint in a timely manner, 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. § 1.139).

Findings Of Fact

1. Respondent is a corporation organized and existing under the laws of the State of Texas, with a mailing address in Kaufman, Texas.
2. At all times material herein, Respondent was licensed under the provisions of the PACA, or operated subject to those provisions. License number 20051143 was issued to Respondent on August 9, 2005. The license was suspended on May 25, 2012, pursuant to section 7(d) of the

¹ Christopher Sutton was served by certified mail on October 26, 2012. Keith Sutton was served by certified mail on October 27, 2012. The certified mail addressed to Donald Johnson was returned as "unclaimed" and he was served by regular mail.

PACA (7 U.S.C. § 499g(d)) for failure to pay a reparation award. The license is next subject to renewal pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)) on August 9, 2013.

3. Respondent, during the period May 3, 2011 through February 17, 2012, failed to make full payment promptly of the agreed purchase prices, or balances thereof, for 103 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce from 13 sellers, in the total amount of \$585,516.69.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent willfully, flagrantly, and repeatedly violated section 2(4) of the PACA, 7 U.S.C. § 499b(4).

Order

1. The facts and circumstances of the above violations shall be published.
2. Respondent's PACA license is revoked.
3. This order shall take effect on the day that this Decision becomes final. Pursuant to the Rules of Practice governing procedures under the Act, 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 of this Decision and Order shall be served upon parties.

March 29, 2013

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge