

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0237

In re: JK Farm, Inc.,
d/b/a MS Food Service,

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 February 15, 2012, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA).

The Complaint filed by Complainant alleges that Respondent, during the period October 2009 through November 2010, failed to make full payment promptly to thirteen (13) sellers of the agreed purchase prices in the total amount of \$934,355.51 for 157 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate and foreign commerce. The Complaint further alleges that on November 29, 2010, Respondent filed a Voluntary Petition pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. § 1101 et seq.) in the United States Bankruptcy Court for the District of Columbia (Case No. 10-01182), and that Respondent admits in its bankruptcy schedules that 12 of the 13 sellers¹ referenced in the

¹ The produce seller Mandujano Brothers is not listed on the bankruptcy petition.

Complaint filed hold unsecured claims for unpaid produce debt. With four exceptions², in the case of each of the 12 sellers listed in the bankruptcy schedules, the amounts identified in the bankruptcy schedules for unpaid produce debt are greater than or equal to the amounts alleged as owed in the Complaint.

The Complaint was sent by the Hearing Clerk certified mail to Respondent on February 16, 2012, and returned, marked by the United States Postal Service as “refused.” The Complaint was then sent by the Hearing Clerk regular mail on February 24, 2012, and service was effected on that date pursuant to section 1.147 (c)(1) of the Rules of Practice (7 C.F.R. § 1.147 (c)(1)). On March 16, 2012, Respondent was informed that it had failed to file an answer under the Rules of Practice, and that it would be informed of any subsequent proceedings.

As Respondent failed to file an answer to the Complaint within the 20 day time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), 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. JK Farm, Inc., d/b/a MS Food Service (Respondent) is or was a corporation organized in the state of Pennsylvania and existing under the laws of the District of Columbia. During all times material herein, its business address was in Washington, D.C.

² The bankruptcy petition lists the amount of produce debt owed to Eagle Fruit Traders as \$44,530.80, to Cimino Brothers Produce as \$22,223.00, to Marc Riendeau Produce as \$65,024.00, and to T&M Distributors, Inc. as \$56,304.84.

2. At all times material herein, Respondent was licensed under and operating subject to the provisions of the PACA. License number 20060600 was issued to Respondent on March 23, 2006. This license was subject to renewal on March 23, 2012.³

3. Respondent, during the period October 2009 through November 2010, failed to make full payment promptly to thirteen (13) sellers of the agreed purchase prices in the total amount of \$934,355.51 for 157 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate and foreign commerce.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Respondent's failure to make full payment promptly, as more fully described in section 46.2(aa) of the Regulations (7 C.F.R. § 46.2 (aa)), of the agreed purchase prices for perishable agricultural commodities that it 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

1. Respondent's PACA license shall be revoked, and the facts and circumstances of the violations shall be published.

2. This order shall take effect on the day that this Decision becomes final.

3. 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

³ Respondent did not renew its license by the March 23, 2012, but according to PACA Division policy, the license will remain active for approximately 30-45 days from that date,

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 Default Decision and Order shall be served upon parties by the Hearing Clerk.

April 24, 2012

Peter M. Davenport
Chief Administrative Law Judge

during which Respondent may renew the license by paying the required fee.