

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0234

In re: Third Coast Produce Company, Ltd.,

Respondent

Decision and Order

Preliminary Statement

This is a disciplinary proceeding brought pursuant to the provisions of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (PACA), the Regulations promulgated pursuant to the PACA (7 C.F.R. §§ 46.1 through 46.45), and the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary (7 C.F.R. §§ 1.130 through 1.151). Charles W. Parrott, the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, initiated this proceeding by filing a Complaint on February 15, 2012, alleging that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to 21 sellers of produce it purchased, received and accepted, and seeking that the facts and circumstance of the violation be published.

Respondent filed a timely Answer to the Complaint and the parties were directed by Order entered on March 28, 2012 to file witness and exhibit lists with the Hearing Clerk and to exchange exhibits. Complainant then moved for a decision without hearing based on admissions pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). Ruling on the Motion was

deferred pending receipt of a Response from the Respondent. Respondent filed a Response on April 26, 2012 and requested an oral hearing on the matter.

Respondent's Answer admitted accounting discrepancies, but substantially admitted the debts alleged in the Complaint casting blame for the violations of the Act on a "trusted employee and officer, Javier Bueno." Respondent specifically admitted violating the Act stating that "the shortfall in receivables, for which criminal charges have been sought against Javier Bueno, caused the failure to pay for product as received, and ultimately led to the demise of the Company." Respondent further stated that "strictly in relation to the need to respond by Respondent to the pending Complaint, that Respondent, TCP Ventures, Ltd. f/k/a/ Third Coast Produce Company, Ltd., would like to respond that the failure to pay was indeed true, to the extend [sic] indicated, but that it was not from a common design or malfeasance on the part of the remaining principals of the enterprise, George Finch and Dennis Honeycutt."

The cover letter accompanying the Response filed by the Respondent clearly indicates that "[T]he "Response is substantially an admission of liability on the part of TCP¹ as to the failure to pay promptly in respect to certain commodity transactions...." and asserts that the failure to pay was not from a common design or malfeasance on the part of George Finch or Dennis Honeycutt and that neither individual should be considered "responsibly connected" to the violations. As this action is limited to the question of whether the named Respondent committed willful, flagrant, and repeated violations of section 2(4) of the PACA as alleged in the Complaint, any question of whether Finch and Honeycutt should be considered "responsibly connected" is not before me at this time.

Respondent's denial that its failure to pay was not willful is without merit. A violation is

¹ Respondent indicates that Third Coast Produce Company, Ltd subsequently became TCP Ventures, Ltd.

willful under the Administrative Procedure Act (5 U.S.C. §558(c)) if a prohibited act is done intentionally, irrespective of evil intent, or done with a careless disregard of statutory requirements. *In re: Ocean View Produce, Inc.*, 68 Agric. Dec. 594 (2009). Accordingly, a violation is willful if a prohibited act is done intentionally, regardless of the violator's intent in committing those acts. *In re: Hogan Distributing, Inc.*, 55 Agric. Dec. 622, 630 (1996). Willfulness is established in this action as Respondent despite having a clear statutory requirement to make full and prompt payment withheld full and prompt payment from 21 sellers from whom it purchased, received and accepted perishable agricultural commodities in the course of or in contemplation of interstate and foreign commerce.

As I find that Respondent's Answer and the Response to the Motion both substantially admit the material allegations of the Complaint and no material issues of fact are in dispute, no hearing is warranted in this matter. *See, Veg-Mix, Inc. v. U.S. Dep't of Agric.*, 832 F. 2d 601, 607-08 (D.C. Cir. 1987). Accordingly, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Respondent is or was a limited partnership organized and existing under the laws of Texas. Respondent ceased business operations on or about June 28, 2010. Respondent's business address and mailing address was in Houston, Texas.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. License No. 2002 1620 was issued to Respondent on September 19, 2002. The license terminated on September 19, 2011 pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.
3. Respondent, during the period of February 5, 2010, through July 16, 2010, on or about

the dates and in the transactions set forth in Appendix A to the Complaint, incorporated herein by reference, failed to make full payment promptly to 21 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$514,943.40 for 207 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in the course of or in contemplation of interstate and foreign commerce.

Conclusions of Law

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

Order

1. A finding is made that Respondent has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and that the facts and circumstances set forth above, shall be published.
2. This decision will become final without further proceedings 35 days after service hereof unless appealed to the Judicial Officer by a party to these proceedings 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, 1.145.

Copies of this Decision and Order shall be served upon the parties.

April 27, 2012

Peter M. Davenport
Chief Administrative Law Judge