

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0236

In re: Big Way, Inc.,

Respondent

Default Decision and Order

Preliminary Statement

This is a disciplinary proceeding brought under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (PACA) and the Regulations promulgated pursuant to the PACA (7 C.F.R. §§ 46.1 through 46.45) instituted by a Complaint filed on February 15, 2011, by Charles W. Parrott, 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 June 29, 2010 through December 28, 2010, failed to make full payment promptly to 9 sellers of the agreed purchase prices in the total amount of \$306,759.93 for 31 lots of perishable agricultural commodities which Respondent purchased, received and accepted in the course of or in contemplation of interstate commerce.

Respondent was duly served with the Complaint by certified mail on February 21, 2012 and 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). Since Respondent failed to answer within the

20 day time period prescribed by the Rules of Practice, the following Finding 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. Big Way, Inc. is a corporation organized and existing under the laws of the District of Columbia with a mailing address in Washington, DC.
2. At all times material herein, Respondent was licensed or operating subject to license under the provisions of the PACA. License number 20091269 was issued to Respondent on September 4, 2009. This license was terminated on September 4, 2011 pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)) when Respondent failed to pay the required annual fee.
3. During the period June 29, 2008, through December 28, 2010, on or about the dates set forth in Appendix A to the Complaint incorporated herein by reference, Respondent failed to make full payment promptly to 9 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$306,759.93 for 31 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate commerce.
4. On January 8, 2011, Respondent¹ filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code (7 U.S.C. §701 *et seq.*) in the United States Bankruptcy Court for the Eastern District of Virginia, (Case No. 11-10155). In the Bankruptcy schedules, Respondent listed 8 of the 9 sellers identified in this action in amounts equal to or greater than contained in the Complaint herein.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

¹ Hong Woo Nam filed the petition as an individual doing business as Big Way, Inc.

2. Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)). The failure of Respondent to make full payment promptly of the agreed purchase prices for the perishable agricultural commodities that it purchased, received, and accepted in interstate commerce constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) as described in section 46.2(aa) of the Regulations (7 C.F.R. § 46.2(aa)).

Order

1. The facts and circumstances of the violations found herein 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 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 on the parties by the Hearing Clerk.

August 2, 2012

Peter M. Davenport
Chief Administrative Law Judge