

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

Docket No. 12-0513

In re:

PRIME TROPICAL, INC.,

Respondent.

DECISION AND ORDER ON THE RECORD

The instant matter involves a complaint filed by the United States Department of Agriculture (“Complainant”; “USDA”) against Prime Tropical, Inc. (“Prime”; “Respondent”) alleging violations of the Perishable Agricultural Commodities Act, 1930, as amended, 7 U.S.C. §499a et seq. (“PACA”; “the Act”). The complaint alleged that Respondent failed to make full payment promptly in the aggregate amount of \$825,808.09 to eighteen (18) sellers of the agreed purchase prices for 150 lots of perishable agricultural commodities during the period September 2010 through June 2011.

I. PROCEDURAL HISTORY

On July 5, 2012, Complainant filed a Complaint against Respondent alleging violations of the PACA. Respondent filed an Answer with the Hearing Clerk for the Office of Administrative Law Judges (“OALJ”) for USDA (“Hearing Clerk”) on July 30, 2012. Pleadings were also filed by individuals affiliated in some way with the corporate Respondent, but the instant action names solely the corporate entity Prime Tropical, Inc. as Respondent.

On August 9, 2012, I set a schedule for pre-hearing submissions. By motions filed on September 6, 2012, Complainant requested entry of a Decision on the record without hearing, and requested that the deadlines for submissions be suspended pending a ruling on the motion for

Decision. By Order issued September 7, 2012, I granted that motion. On September 19, 2012, counsel¹ for two individuals affiliated with Respondent filed a response to Complainant's motion, noting no objection to a Decision on the record with respect to the corporate Respondent Prime Tropical Inc.

On September 24, 2012, Yolanda Ramirez and Vincent P. Ramirez, Jr. filed opposition to Complainant's motions. Although these individuals may have interests in the affairs of Respondent, neither is a party to this action, and accordingly, neither has standing in this matter. I note their opposition, but find that they have presented no valid legal defense respecting the corporate Respondent Prime Tropical Inc. Accordingly, I overrule their objection to Complainant's motions. I also find it significant that Respondent's counsel has no objection to entry of Decision without Hearing, so far as the Decision affects only the named corporate Respondent

I hereby admit to the record the attachments to Complainant's motion for Decision without hearing. This Decision and Order is issued on unopposed motion of Complainant, and incorporates all of the pleadings of the parties and all other evidence of record.

II. FINDINGS OF FACT & CONCLUSIONS OF LAW

A. Discussion

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes ("Rules of Practice"), set forth at 7 C.F.R. § 1.130 et seq., apply to the adjudication of the instant matter. Pursuant to the Rules of Practice, Respondents are required to file an answer within twenty days after the service of a complaint. 7 C.F.R. §1.136(a). Failure to file a timely answer or failure to deny or otherwise respond to an allegation in the Complaint shall be deemed admission of all the material allegations in the Complaint, and

¹The Benson Law Group and Gordon S. Benson, Esq. are counsel of record for the corporate Respondent.

default shall be appropriate. 7 C.F.R. § 1.136(c). The Rules allow for a Decision Without Hearing by Reason of Admissions (7 C.F.R. §1.139).

PACA requires payment by a buyer within ten (10) days after the date on which produce is accepted. 7 C.F.R. § 46.2(aa)(5). The regulations allow the use of different payment terms so long as those terms are reduced to writing prior to entering into the transaction. 7 C.F.R. § 46.2(aa)(11).

In its Answer to the Complaint, Respondent specifically admitted Articles I and II of the Complaint. With respect to Article III, Respondent did not deny that it had failed to timely pay sellers for perishable agricultural commodities, but asserted its belief that fewer than 18 sellers were involved and that the unpaid amount was less than \$825,808.00. Further, Respondent did not contend that it expects to make payment to the sellers or otherwise reach compliance with the Act.

The Act requires “full payment promptly” and where “respondent admits the material allegations in the complaint and makes no assertion that the respondent has achieved or will achieve full compliance with the PACA within 120 days after the complaint is served on that respondent, or the date of the hearing, whichever occurs first, the [matter] will be treated as a ‘no-pay’ case.” In re: Scamcorp, Inc., d/b/a Goodness Greeness, 57 Agric. Dec. 527, 547 - 549 (1998).

I find that Respondent’s disagreement with the alleged number of sellers involved and total amount that it failed to pay timely does not constitute a valid defense to liability under PACA. Respondent’s denial of liability addresses only the number and total sum involved in the transactions underlying the instant action, and does not constitute a material denial of engaging in practices that violate PACA. The outstanding balance due to sellers is in excess of \$5,000.00,

and axiomatically represents more than a *de minimis* amount. See, In re: Fava & Co., 46 Agr. Dec. 798, 81 (1984); 44 Agric. Dec. 879 (1985). Complainant need not establish each of the transactions alleged, as the same sanction would be entered so long as the violations are not *de minimis*. In re Moore Mktg. Int'l Inc., 47 Agric. Dec. __ at 12-13 (Sept. 8, 1988).

“[U]nless the amount admittedly owed is *de minimis*, there is no basis for a hearing merely to determine the precise amount owed”. In re: Tri-State Fruit & Vegetable, Inc., 46 Agric. Dec. 81, 82-83 (1984); 46 Agric. Dec. 83 (1985). Ergo, I find that a hearing is not necessary in this matter. Where a violation of the PACA is not *de minimis*, and there is no legitimate dispute between the parties as to the amount due, “it is well-settled under the Department’s sanction policy that the license of a produce dealer...is revoked...” In re: Scamcorp, Inc., *supra*; In re: Veg-Mix, Inc., 44 Agric. Dec. 1583, 1590, order denying reconsideration, 44 Agric. Dec. 2060 (1985), *aff’d* and remanded, 832 F.2d 601 (D.C. Cir. 1987); In re: Tri-State Fruit & Vegetable, Inc., *supra*.

A violation is repeated whenever there is more than one violation of the Act, and is flagrant whenever the total amount due to sellers exceeds \$5,000.00. In re: D.W. Produce, Inc., 53 Agric. Dec. 1672, 1678 (1994). A violation is willful if a person intentionally performs an act prohibited by statute or carelessly disregards the requirements of a statute, irrespective of motive or erroneous advice. Id. at 1678. In the instant matter, pleadings from an action involving Respondent filed in United States District Court for the Central District of California demonstrate that Respondent owes produce sellers for purchases for which Respondent failed to pay. See, Attachments to Complainant’s motion. Respondent’s failure to pay sellers promptly for the purchase of products covered by section 2(4) of the PACA is willful, and the violations are repeated and flagrant.

Therefore, revocation of Respondent's PACA license and publication of the facts and circumstances of Respondent's violations are appropriate sanctions.

B. Findings of Fact

1. Respondent Prime Tropical Inc. is or was a corporation organized and existing under the laws of the state of California and at all times material herein its business address was 1601 E. Olympic Blvd., Building 500, Los Angeles, California 90021.
2. At all times material hereto, Respondent was licensed under and operated subject to the provisions of the PACA, under license number 20050940, issued on June 20, 2005.
3. Respondent's license was suspended on October 28, 2011 for failure to pay a reparation award pursuant to section 7(d) of the PACA, 7 U.S.C. § 499g(d).
4. During the period from September 2010 through June 2011, Respondent failed to make full payment promptly of the agreed purchase prices in the aggregate of \$825,808.09 for 150 lots of perishable agricultural commodities purchased, received, and accepted by Respondent in interstate and foreign commerce from 18 sellers.
5. The transactions that demonstrate violations of the PACA are described and enumerated in Appendix A of the Complaint filed in this matter, which are incorporated herein by reference.
6. The unpaid balances represent more than *de minimis* amounts, thereby obviating a need for a hearing.

C. Conclusions of Law

Respondent's failure to make full payment promptly of the agreed purchase prices in the total amount of \$825,808.09 for perishable agricultural commodities 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

Respondent Prime Tropical Inc. willfully, flagrantly, and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Respondent Prime Tropical Inc.'s PACA license is revoked.

The facts and circumstances underlying Respondent's violations shall be published.

This Order shall take effect on the eleventh (11th) day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision and Order shall 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 7 C.F.R. §§1.139 and 1.145.

The Hearing Clerk shall serve copies of this Decision and Order upon the parties.

So ORDERED this 27th day of September, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge