

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0048

In re: Freshco Foodservice, Inc.,

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 Respondent, during the period August 2010 through August 2011, failed to make full payment promptly to eight (8) sellers of the agreed purchase prices in the total amount of \$288,371.85 for 58 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate and foreign commerce. The Complaint requested that pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)), the Administrative Law Judge find that Respondent willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order that the facts and circumstances of the violations be published.

The Complaint was sent to Respondent's principals by the Hearing Clerk certified mail and received on October 30, 2012. 1.136). Respondent failed to answer and 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 Oregon and had a business address in Portland, Oregon.
2. At all times material herein, Respondent was licensed under the provisions of the PACA, or operated subject to those provisions. License number 20031373 was issued to Respondent on August 8, 2003. The license was suspended on August 5, 2011, pursuant to section 7(d) of the PACA (7 U.S.C. § 499g(d)) for failure to pay a reparation award. The license terminated on August 8, 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 August 2010 through August 2011, failed to make full payment promptly of the agreed purchase prices, or balances thereof, for 58 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce from eight (8) sellers, in the total amount of \$288,371.85.

Conclusions of Law

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

Order

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

2. 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 hereof shall be served upon parties.

February 7, 2013

Peter M. Davenport
Chief Administrative Law Judge