

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0014

In re: Pacific Rim Onion, Inc.,

Respondent

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.*) (“PACA”), instituted by a Complaint filed on February 27, 2009, by the Associate Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, United States Department of Agriculture on October 11, 2012. The Complaint alleged that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA by failing to make full payment promptly to two (2) sellers for purchases of 67 lots of perishable agricultural commodities in the course of interstate and foreign commerce in the amount of \$340,687.50 during the period September 4, 2008 through February 10, 2009.

Respondent submitted an Answer which stated, “Respondent denies the allegations set forth in paragraphs 3 and 4.” (Answer, pg. 1 of 2). Subsequent investigation however indicated that as of February 27, 2013, the amount of \$340,687.50 due to the two (2) sellers named in the Complaint remained unpaid. Citing the results of that investigation and Respondent's response to the allegations in the Amended Complaint, Complainant filed a Motion requesting an Order

Requiring Respondent To Show Cause Why a Decision Without Hearing Should Not Be Issued against Respondent due to its failure to make full and prompt payment for produce purchases, in willful, flagrant and repeated violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

The Department's policy is set forth in *In re Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 548-549 (1998), which held that when a Complaint is filed alleging the failure to make full payment promptly under the PACA, if the Respondent is not in full compliance with the PACA within 120 days after the complaint is served upon the Respondent or the date of the hearing, whichever occurs first, the case will be treated as a "no pay" case for which the sanction is license revocation. Complainant moved for the issuance of an Order requiring Respondent to demonstrate that it made full payment of the \$340,687.50 which the Complaint alleges Respondent owed to two (2) produce sellers, by February 11, 2013 and requested that should Respondent fail to demonstrate that it made full payment of the \$340,687.50 by February 11, 2013, a Decision Without Hearing be issued, finding that Respondent has committed willful, flagrant and repeated violations of section 2(4) of the PACA, and ordering that the facts and circumstances of Respondent's violations be published.

Consistent with the Department's policy set forth in the *Scamcorp* decision, I issued an Order Requiring Respondent To Show Cause Why a Decision Without Hearing Should Not Be Issued on March 5, 2013, allowing Respondent 30 days from the date of service of the Order to demonstrate that it made full payment of \$340,687.50 owed to the two (2) produce sellers, as alleged in the complaint, by February 11, 2013. Respondent failed to respond to the Order. Accordingly, this case will be treated as a "no pay" case under the policy set forth in the *Scamcorp* decision.

Findings of Fact

1. Pacific Rim Onion, Inc. (Respondent) is a corporation organized and existing under the laws of the State of Oregon; however, Respondent is now out of business.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. License No. 2007 1217 was issued to Respondent on August 21, 2007. This license terminated on August 21, 2009, 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. During the period September 4, 2008, through February 10, 2009, Respondent failed to make full payment promptly of the agreed purchase price for 67 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate commerce from two (2) sellers, in the total amount of \$340,687.50.
4. Subsequent investigation indicated that as of February 27, 2013, the amount of \$340,687.50 due to these two (2) sellers remained unpaid.

Conclusions of Law

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

Order

1. The facts and circumstances of the violations shall be published.
2. This order shall take effect on the 11th day after this Decision becomes final.
3. Pursuant to the Rules of Practice, 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 the parties.

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge