

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



Docket No. 13-0222

In re: Liborio Market, Inc.

Respondent

Default 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). Complainant, Fruit and Vegetable Program, Agricultural Marketing Service, initiated this proceeding against Liborio Market, Inc. (Respondent) by filing a disciplinary Complaint on April 19, 2013.

The Complaint filed by Complainant alleges that Respondent, between July 17, 2010, and June 14, 2012 willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to 9 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$123,345.09 for 248 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of or in contemplation of interstate and foreign commerce in willful violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

The Complaint was mailed to Respondent by certified mail on April 1, 2013, but was returned as being "unclaimed." Respondent was then served pursuant to the Rules of Practice by regular mail on May 23, 2013.

As Respondent 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), 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 Liborio Market, Inc. is a corporation organized and existing under the laws of the state of California with a business and mailing address in Los Angeles, California. Respondent is not currently operating and the Complaint was served on its president and owner, Enrique J. Alejo.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License No. 1988 1288 was issued to Respondent on May 26, 1988, and is next scheduled for renewal on May 26, 2015.

3. Respondent, during the period July 17, 2010, through June 14, 2012, on or about the dates and in the transactions set forth in Appendix A to the Complaint and incorporated herein by reference, failed to make full payment promptly to 9 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$123,345.09 for 248 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce.

4. On April 13, 2012, Respondent filed a Voluntary Petition pursuant to Chapter 11 of the Bankruptcy Code (11 U.S.C. § 1101 *et seq.*) in the United States Bankruptcy Court for the

Central District of California. The petition was designated Case No. 12-23254. Respondent admits in its Schedule F that 8 of the 9 sellers listed in Appendix A, hold unsecured claims for unpaid produce debt totaling \$99,029.29¹.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent willfully, flagrantly and repeatedly violated 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 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 upon parties.

August 22, 2013

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge

¹ The amount of the claims listed on the Schedule F for five of the eight sellers is larger than the amount listed in Appendix A to the Complaint. The amount of two of the claims in the Schedule F is smaller than the amount listed in Appendix A. The remaining claim is for the same amount. The Schedule F was attached to the Complaint as Attachment A.