

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)
)
Valley Produce Corp.,) PACA-D Docket No. 18-0030
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearances:

Christopher P. Young, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, for the Complainant, Agricultural Marketing Service (“AMS”); and

Jason R. Klinowski, Esq., of Wallace, Jordan, Ratliff & Brandt, LLC, 800 Shades Creek Parkway, Suite 400, Birmingham, AL 35209, for the Respondent, Valley Produce Corp.

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499 *et seq.*) (“PACA”); the regulations promulgated pursuant to PACA (7 C.F.R. §§ 46.1 through 46.45) (“Regulations”); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) (“Rules of Practice”).

The Associate Deputy Administrator for the Fair Trade Practices Program, Agricultural Marketing Service (“Complainant” or “AMS”), initiated this proceeding against Valley Produce Corp. (“Respondent”) by filing a disciplinary complaint on April 27, 2018. The Complaint alleged that, during the period August 2016 through October 2017 (on or about the dates and in the transaction set forth in Appendix A to the Complaint, attached hereto and incorporated by reference), Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to nineteen sellers, in the total amount of \$873,986.15, for

120 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate commerce. The Complaint also requested that an Administrative Law Judge find that Respondent committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) and “revoke Respondent’s PACA license [or], in the event that Respondent fails to renew its license, publish the facts and circumstances of Respondent’s violations pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).”¹

Respondent was duly served with a copy of the Complaint and did not file an answer within the twenty-day period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).²

On July 3, 2018, I issued an order directing the parties to show cause (“Show Cause Order”), not later than twenty days after that date, why default should not be entered against Respondent. On July 23, 2018, AMS filed a Response to Show Cause Order and Request for Decision Without Hearing by Reason of Default (“Motion for Default”) and proposed Decision

¹ Compl. at 3. *See Scamcorp, Inc.*, 57 Agric. Dec. 527, 547-49 (U.S.D.A. 1998).

² United States Postal Service records reflect that the Complaint was sent via certified mail to [REDACTED] Respondent’s 100% owner and president, and delivered on May 16, 2018. Respondent had twenty days from the date of service to file a response. Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent’s answer would have been due by June 18, 2018; however, on June 4, 2018, Respondent’s counsel filed a “Motion to Extend Time to Answer” requesting a twenty-day extension. On June 5, 2018, I entered an order extending Respondent’s filing deadline to June 26, 2018. Nevertheless, Respondent has yet to file an answer in this matter.

Without Hearing by Reason of Default (“Proposed Decision”). Respondent failed to respond to the Show Cause Order³ and has not filed any objections to AMS’s Motion for Default.⁴

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision. 7 C.F.R. § 1.136(c). Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer where, as in the present case, no meritorious objections have been filed.⁵

Furthermore, Respondent’s failure to file a timely answer renders this a “no-pay” case.⁶ “In any ‘no-pay’ case in which the violations are flagrant and repeated, the license of a PACA licensee, shown to have violated the payment provisions of the PACA, will be revoked.”⁷

Respondent has admitted, by failing to file an answer, that it committed “willful, flagrant, and

³ The Show Cause Order was issued on July 3, 2018; therefore, the parties were required to file responses on or before July 23, 2018. As of this date, Respondent has not filed a response.

⁴ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent’s counsel via certified mail and delivered on July 30, 2018. Respondent had twenty days from the date of service to file objections to AMS’s motion. 7 C.F.R. § 1.139, Weekends and federal holidays shall not be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following work day. 7 C.F.R. § 1.147(h). In this case, Respondent’s objections were due by August 20, 2018. Respondent has not filed any objections.

⁵ 7 C.F.R. § 1.139; *see supra* note 4.

⁶ *See Scamcorp, Inc., 57 Agric. Dec. 527, 549 (U.S.D.A. 1998)* (“In any PACA disciplinary proceeding in which it is alleged that a respondent has failed to pay in accordance with the PACA and that respondent fails to file a timely answer to the complaint, the PACA case will be treated as a ‘no-pay’ case.”).

⁷ *Id.*

repeated violations”⁸of section 2(4) of PACA (7 U.S.C. § 499b(4)).⁹ Respondent’s PACA license, however, terminated prior to the institution of this proceeding; therefore, the appropriate sanction is publication of the facts and circumstances of Respondent’s violations.¹⁰

As Respondent failed to answer the Complaint, and upon AMS’s motion for the issuance of a decision without hearing by reason of default, this Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Valley Produce Corp. is or was a corporation organized and existing under the laws of the State of Georgia. Respondent’s business and mailing address is or was 9526 South Main Street, Suite D, Jonesboro, Georgia 30236.
2. At all times material herein, Respondent Valley Produce Corp. was licensed and/or operating subject to the provisions of PACA. License number 20100755 was issued to Respondent on April 22, 2010. Respondent’s license terminated on April 22, 2018, pursuant to section 4(a) of PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.
3. Respondent Valley Produce Corp., during the period August 2016 through October 2017, on or about the dates and in the transactions set forth in Appendix A to the Complaint, attached

⁸ Compl. ¶ IV.

⁹ See 7 C.F.R. § 1.136(c).

¹⁰ See Baiardi Food Chain Corp., 64 Agric. Dec. 1822, 1832 (U.S.D.A. 2005); Scamcorp, Inc., 57 Agric. Dec. 527, 571 n.23 (U.S.D.A. 1998); Hogan Distrib., Inc., 55 Agric. Dec. 622, 633 (U.S.D.A. 1996).

hereto and incorporated by reference, failed to make full payment promptly to nineteen sellers for 120 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate commerce, in the total amount of \$873,986.15.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Valley Produce Corp.'s failure to pay promptly with respect to the transactions referenced in Finding of Fact No. 3 above, as set forth in Appendix A to the Complaint, constitutes willful, flagrant, and repeated violations of section 2(4) of PACA (7 U.S.C. § 499b(4)), for which the below Order is issued.
3. As Respondent Valley Produce Corp.'s PACA license terminated prior to the institution of this proceeding, the appropriate sanction is publication of the facts and circumstances of Respondent's violations.

ORDER

1. A finding is made that Respondent Valley Produce Corp. committed willful, flagrant, and repeated violations of section 2(4) of PACA (7 U.S.C. § 499b(4)).
2. The facts and circumstances of Respondent Valley Produce Corp.'s violations, as set forth above, shall be published in accordance with section 8(a) of PACA (7 U.S.C. § 499h(a)).

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (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 by the Hearing Clerk upon each of the parties, with courtesy copies provided via email where available.

Done at Washington, D.C.

this 24th day of August, 2018



Jill S. Clifton
Administrative Law Judge
for
Channing D. Strother
Acting Chief Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
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| | Seller's Name | No. Lots | Commodity | Dates Accepted | Dates Payment Due | Amounts Past Due & Unpaid |
|----|--|----------|-----------|----------------------------|----------------------------|---------------------------|
| 1 | Villita Avocados Inc Pharr, TX | 8 | mxvg | 08/01/16 to 09/26/16 | 08/22/16 to 10/17/16 | \$384,000.00 |
| 2 | Del Rey Avocado Co Inc Fallbrook, CA | 23 | Avocados | 11/01/16 | 11/11/16 | \$15,300.00 |
| 3 | Sweet Seasons LLC Hidalgo, TX | 13 | mxvg | 11/21/16 to 03/06/17 | 12/11/16 to 03/27/17 | \$65,340.75 |
| 4 | Green Fruit Avocados, LLC Newport Beach, CA | 6 | Avocados | 12/07/16 to 01/25/17 | 12/28/16 to 02/15/17 | \$65,499.20 |
| 5 | Prime Herbs LLC Houston, TX | 7 | Squash | 01/06/17 to 06/12/17 | 01/16/17 to 06/22/17 | \$7,896.00 |
| 6 | Traveler Produce LLC McAllen, TX | 3 | Tomatoes | 01/17/17 to 02/06/17 | 02/07/17 to 02/27/17 | \$18,244.50 |
| 7 | Montero Farms Inc McAllen, TX | 9 | mxvg | 01/31/17 to 04/21/17 | 02/10/17 to 05/01/17 | \$14,844.00 |
| 8 | Delta Fresh Sales LLC Nogales, AZ | 4 | Tomatoes | 02/15/17 to 04/26/17 | 02/25/17 to 05/06/17 | \$39,342.00 |
| 9 | GR Produce McAllen, TX | 6 | mxvg | 03/20/17 to 06/05/17 | 04/03/17 to 07/05/17 | \$15,382.00 |
| 10 | Ergo Produce Inc. McAllen, TX | 1 | Tomatoes | 04/03/17 | 04/13/17 | \$3,361.50 |
| 11 | Frutikas Distributing LLC Hackensack, NJ | 6 | Mangoes | 04/08/17 to 05/28/17 | 04/23/17 to 06/12/17 | \$10,115.00 |
| 12 | Plantation Produce Company LLC Mission, TX | 3 | Onions | 04/17/17 to 05/28/17 | 04/27/17 to 06/07/17 | \$24,018.20 |
| 13 | West PAK Avocado Inc Murrieta, CA | 3 | Avocados | 04/19/17 to 05/03/17 | 04/29/17 to 05/13/17 | \$41,520.00 |
| 14 | Caraveo Papaya Inc Bronx, NY | 5 | Papaya | 05/15/17 to 06/26/17 | 05/30/17 to 07/11/17 | \$5,424.00 |
| 15 | Iscavo Avocados USA LLC Mission, TX | 7 | Avocados | 05/15/17 to 07/24/17 | 05/20/17 to 08/03/17 | \$118,080.00 |

| | | | | | | |
|----|--------------------------------|------------|-------------|----------|----------|----------------------------------|
| | Soconusco Produce LLC | | | 05/30/17 | 06/09/17 | |
| | | | | to | to | |
| 16 | McAllen, TX | 8 | Mangoes | 08/30/17 | 09/09/17 | \$11,354.00 |
| | M & M West Coast Produce Farms | | | | | |
| 17 | Salinas, CA | 1 | Avocados | 07/19/17 | 07/29/17 | \$14,940.00 |
| | | | | 07/26/17 | 08/16/17 | |
| | Frut Mich Inc | | | to | to | |
| 18 | Pharr, TX | 3 | Onions | 08/14/17 | 08/14/17 | \$16,798.00 |
| | | | | 09/01/17 | 09/10/17 | |
| | Ivan Big Tree LLC | | | to | to | |
| 19 | McAllen, TX | 4 | mxvg | 10/18/17 | 10/28/17 | \$2,527.00 |
| | Sellers | 120 | Lots | | | Total <u>\$873,986.15</u> |