



UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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In re: )  
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Spiech Farms, LLC, ) PACA-D Docket No. 18-0081  
 )  
Respondent. )

**DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT**

Appearance:

*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").*

**Preliminary Statement**

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a *et seq.*) ("PACA"); the regulations promulgated thereunder (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 Complainant, Associate Deputy Administrator, Fair Trade Practices Program, PACA Division, Agricultural Marketing Service, United States Department of Agriculture ("AMS"), initiated this proceeding against Respondent, Spiech Farms, LLC, by filing a complaint on September 26, 2018. The Complaint alleged that, during the period of July 2017 through November 2017, Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to thirty-eight sellers, in the total amount of \$1,153,442.90, for 658 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce. Complainant 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 order that Respondent's PACA license be revoked pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

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).<sup>1</sup>

On December 4, 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 January 29, 2019, Complainant filed a Response to Show Cause Order and Request for Decision Without Hearing by Reason of Default ("Motion for Default") and proposed Decision Without Hearing by Reason of Default ("Proposed Decision"). Respondent failed to respond to the Show Cause Order<sup>2</sup> and has not filed any objections to Complainant's Motion for Default or Proposed Decision.<sup>3</sup>

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<sup>1</sup> United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on October 2, 2018. Respondent had twenty days from the date of service to file a response. 7 C.F.R. § 1.136(a). 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 was due on or before October 22, 2018. Respondent has not filed an answer in this matter.

<sup>2</sup> The Show Cause Order was issued on December 4, 2018; therefore, the parties were required to respond on or before December 26, 2018. However, the United States Department of Agriculture Office of Administrative Law Judges, including the undersigned, and the Office of General Counsel were on furlough from December 22, 2018 through January 28, 2019 due to a lapse in funding. For this reason, on January 29, 2019 I issued a Blanket Order Amending to February 11, 2019 Filing Deadlines Occurring During the Furlough Period in All Cases Pending Before USDA Administrative Law Judges("Blanket Order"), available at [https://oalj.oha.usda.gov/sites/default/files/Blanket%20Order%201.29.2019\\_Redacted.pdf](https://oalj.oha.usda.gov/sites/default/files/Blanket%20Order%201.29.2019_Redacted.pdf) (last visited on Feb. 26, 2019). Pursuant to the Blanket Order, the parties in the above caption matter had until February 11, 2019 to submit a response. As of this date, Respondent has not filed a response.

<sup>3</sup> United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on February 13, 2019. Respondent had

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.<sup>4</sup>

As Respondent failed to answer the Complaint, and upon Complainant'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, Spiech Farms, LLC, is or was a limited liability company organized and existing under the laws of the state of Michigan. Respondent's business and mailing address is or was 61675 M 40, Paw Paw, Michigan 49079-9210.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20070659 was issued to Respondent on March 30, 2007. The license is due for renewal on March 30, 2019.
3. Respondent, during the period July 2017 through November 2017, on or about the dates and in the transactions set forth in Appendix A of the Complaint (attached hereto and

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twenty days from the date of service to file objections thereto. 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 March 5, 2018. Respondent has not filed any objections.

<sup>4</sup> 7 C.F.R. § 1.139; *see supra* note 3.

incorporated herein by reference), failed to make full payment promptly to thirty-eight sellers for 658 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate commerce, in the total amount of \$1,153,442.90.

### **Conclusions**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Spiech Farms, LLC's failure to pay promptly with respect to the transactions referenced in Finding of Fact No. 3 above and set forth in Appendix A of the Complaint (attached hereto) constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), for which the below Order is issued.
3. The total unpaid balance due to produce sellers represents more than a *de minimis* amount, thereby obviating the need for a hearing in this matter.<sup>5</sup>

### **ORDER**

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. A finding is made that Spiech Farms, LLC has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).
3. Respondent's PACA license shall be revoked in accordance with section 8(a) of the 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).

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<sup>5</sup> See *The Square Group, LLC*, 75 Agric. Dec. 689, 695 (U.S.D.A. 2016); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question).

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 6th day of March 2019



Channing D. Strother  
Chief Administrative Law Judge

Hearing Clerk's Office  
United States Department of Agriculture  
Stop 9203, South Building, Room 1031  
1400 Independence Avenue, SW  
Washington, DC 20250-9203  
Tel: 202-720-4443  
Fax: 202-720-9776  
[SM.OHA.HearingClerks@USDA.GOV](mailto:SM.OHA.HearingClerks@USDA.GOV)

	Seller's Name	No. Lots	Commodity	Dates Accepted	Dates Payment Due	Amounts Past Due & Unpaid
1	Mayer's Great Lakes Hydroponics Bronson, MI	23	Lettuce	06/17/17 to 09/27/17	07/16/17 to 10/27/17	\$39,283.20
2	Jensen Farms Hart, MI	31	Asparagus	05/14/17 to 06/25/17	07/28/17	\$10,128.63
3	C & D Fuehring Farms Inc Mears, MI	17	Asparagus	05/17/17 to 06/12/17	07/31/17	\$28,064.90
4	Green Acres Spring Hill, FL	7	Blueberries	03/25/17 to 04/08/17	07/31/17	\$38,140.00
5	Green Ventures Hart, MI	44	Asparagus	05/15/17 to 06/24/17	07/31/17	\$34,019.67
6	Herrygers Farms LLC Hart, MI	56	Asparagus	05/14/17 to 06/16/17	07/31/17	\$55,015.14
7	Lakeshore Farms Shelby, MI	12	Asparagus	05/13/17 to 06/10/17	07/31/17	\$44,026.72
8	LK Van Sickle Farms LLC Hart, MI	23	Asparagus	05/24/17 to 06/22/17	07/31/17	\$39,032.10
9	Malburg Acres LLC Hart, MI	27	Asparagus	05/14/17 to 06/13/17	07/31/17	\$70,214.46
10	(b) (6) Dunnellon, FL	12	Blueberries	03/26/17 to 04/29/17	07/31/17	\$40,956.76

11	(b) (6) Hart, MI	33	Asparagus	05/15/17 to 06/22/17	07/31/17	\$13,461.89
12	Ran-Mark Co. Hart, MI	49	Asparagus	05/12/17 to 06/24/17	07/31/17	\$202,172.93
13	Splendid Blue Farms LLC Bushnell, FL	13	Blueberries	03/27/17 to 05/12/17	07/31/17	\$63,725.28
14	Whispering Oak Blueberry Farm Hudson, FL	9	Blueberries	03/25/17 to 04/25/17	07/31/17	\$43,632.10
15	B & W Orchards Mears, MI	48	Asparagus	05/16/17 to 06/24/17	08/31/17	\$51,640.85
16	Golden Hart Fruit Farms LLC Hart, MI	56	Asparagus	05/14/17 to 06/26/17	08/31/17	\$135,991.10
17	Slocum Farms LLC Hart, MI	29	Asparagus	05/20/17 to 06/25/17	08/31/17	\$39,362.48
18	Villadsen Tree Farm, Inc Pentwater, MI	25	Asparagus	05/16/17 to 06/23/17	08/31/17	\$12,634.09
19	(b) (6) Lawton, MI	1	Grapes	09/27/17	10/27/17	\$14,526.54
20	(b) (6) Covert, MI	5	Blueberries	07/23/17 to 08/07/17	10/31/17	\$6,025.56

21	(b) (6) Grand Junction, MI	7	Blueberries	07/03/17 to 08/06/17	10/31/17	\$4,345.13
22	(b) (6) Decatur, MI	7	Blueberries	07/11/17 to 08/11/17	10/31/17	\$1,388.73
23	(b) (6) Paw Paw, MI	6	Blueberries	07/29/17 to 08/14/17	10/31/17	\$4,091.76
24	(b) (6) Covert, MI	8	Blueberries	07/16/17 to 08/06/17	10/31/17	\$1,582.50
25	Jeronimo Mendez Farm Grand Junction, MI	5	Blueberries	07/04/17 to 07/20/17	10/31/17	\$2,565.90
26	(b) (6) West Oliver, MI	2	Blueberries	07/19/17 to 07/28/17	10/31/17	\$5,001.81
27	(b) (6) Bangor, MI	11	Blueberries	07/24/17 to 08/19/17	10/31/17	\$25,105.95
28	(b) (6) Covert, MI	6	Blueberries	07/27/17 to 08/21/17	10/31/17	\$13,120.93
29	Michigan Pure Blueberries Covert, MI	3	Blueberries	08/08/17 to 08/09/17	10/31/17	\$3,335.15
30	MSP Farm LLC Bangor, MI	6	Blueberries	07/27/17 to 08/23/17	10/31/17	\$15,909.34



31	(b) (6) Bangor, MI	28	Blueberries	07/18/17 to 08/25/17	10/31/17	\$9,922.58
32	(b) (6) Grand Junction, MI	7	Blueberries	07/28/17 to 08/11/17	10/31/17	\$3,073.47
33	(b) (7)(A) Pullman, MI	5	Blueberries	07/04/17 to 08/25/17	10/31/17	\$14,414.25
34	(b) (6) Decatur, MI	6	Blueberries	07/05/17 to 07/25/17	10/31/17	\$1,475.29
35	Very Blue Farms LLC Covert, MI	14	Blueberries	07/20/17 to 08/28/17	10/31/17	\$17,285.10
36	Vigil Blueberry Farm Lawton, MI	9	Blueberries	07/03/17 to 08/07/17	10/31/17	\$10,231.20
37	(b) (6) South Haven, MI	7	Blueberries	07/05/17 to 08/27/17	10/31/17	\$21,248.91
38	(b) (6) Kalamazoo, MI	1	Grapes	10/04/17	11/03/17	\$17,290.50
<b>38 Sellers</b>		<b>658</b>	<b>Lots</b>		<b>Total</b>	<b><u>\$1,153,442.90</u></b>