

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/DALJ/OHG
2019 AUG 16 PM 1:59

In re:) PACA Docket No. D-19-J-0104
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)
The Fruit Club,)
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)
Respondent) **CONSENT DECISION AND ORDER**

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (PACA). The Complaint filed herein, on June 11, 2019, 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 four (4) sellers of the agreed purchase prices in the total amount of \$367,040.00 for nineteen (19) lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce, during the period of June 2016 through October 2017. The Complaint sought the issuance of an order finding that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA, and to revoke Respondent's license pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

The Complaint was served upon Respondent which filed a timely Answer to the Complaint wherein it generally denies the allegations contained therein. Respondent agrees, solely for the purposes of settling this proceeding, to the following Consent Decision and Order. Respondent waives all further proceeding in this matter. Respondent agrees that the Secretary has jurisdiction in this matter, and the parties have now agreed to the entry of a Consent Decision and Order as set forth herein. Therefore, this Consent Decision and Order is entered without

further procedure or hearing pursuant to the consent decision provisions (7 C.F.R. §1.138) of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*)(Rules of Practice) applicable to this proceeding.

The PACA Division has issued its initial determination that Matthew Kleinsasser, President and 100% owner of Respondent, was “responsibly connected”, as this that term is defined in section 1(b)(9) of the PACA (7 U.S.C. § 499a(b)(9)), to Respondent at the time of the alleged violations. As part of settling this matter, Mr. Kleinsasser, the sole individual determined to be responsibly connected to Respondent, agrees not to challenge PACA Division’s “responsibly connected” determination, without admitting or denying that he was “responsibly connected” to the Respondent at the times of the alleged violations, and agrees to waive any further proceedings involving the “responsibly connected” determination. The following findings and conclusions are made without any determination as to whether or not the individual “responsibly connected” to the Respondent, Mr. Matthew Kleinsasser, knowingly, intentionally, or recklessly committed any wrongful acts or defalcations of his obligations under the PACA.

Findings of Fact

1. Respondent is or was a corporation organized and existing under the laws of the state of South Dakota and its mailing address is 2200 E. Rice St., Sioux Falls, South Dakota 57103. The Complaint in this case was served on Respondent at its business address.
2. At all times material herein, Respondent was licensed and/ or operating subject to the provisions of the PACA. License number 20190026 was issued to Respondent on October 15, 2018. This license is suspended due to unpaid reparation awards.

3. Respondent, during the period of June 2016 through October 2017, on or about the dates and in the transactions set forth in Appendix A to the Complaint and incorporated by reference, failed to make full payment promptly to four (4) sellers for nineteen (19) lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate commerce, in the total amount of \$367,040.00.

Conclusions


Respondent has admitted the jurisdictional facts and the parties have agreed to the entry of this Consent Decision and Order. Therefore, this Decision and Order shall be entered without further procedure or hearing pursuant to section 1.138 of the Rules of Practice (7 C.F.R. § 1.138).

Order

A finding is made that Respondent has engaged in flagrant and repeated violations of section 2(4) of the PACA, and Respondent's PACA license shall be revoked. Employment sanctions and licensing restrictions of the "responsibly connected" individual will take effect immediately upon issuance of this Order.

This Order shall become final and effective upon issuance.


Copies of this Order shall be served upon the parties.


James Ivy
Associate Deputy Administrator
Agricultural Marketing Service
Fair Trade Practices Program

8/15/19
Date signed


Shelton S. Smallwood
Attorney for Complainant


8/9/19
Date signed


Joseph M. Wiltse
Attorney for Respondent
Attorney for Responsibly Connected Party

Aug 8, 2019
Date Signed

Done at Washington, D.C.

this 16th day of August, 2019



Administrative Law Judge

Chief
Channing D. Strother