

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
 Bucks Fresh Produce LLC,) PACA-D Docket No. 19-J-0076
)
 Respondent.)

REC'D - USDA/OALJ/DHC
2019 AUG 28 PM 8:00

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, Washington, DC, for the Complainant, the Associate Deputy Administrator, Fair Trade Practices Program, PACA Division, Agricultural Marketing Service ("AMS"); and

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, initiated this proceeding against Respondent Bucks Fresh Produce LLC by filing a Notice to Show Cause on April 22, 2019. The Notice to Show Cause why Respondent Bucks Fresh Produce LLC should not have its license suspended pursuant to section 13(a) of the PACA (7 U.S.C. § 499m(a)) alleges that Respondent refused to permit the inspection of records by AMS during an investigation, in violation of the PACA. Complainant requested that pursuant to the PACA and Rules of Practice, the Administrative Law Judge order the publication of the facts and

circumstances of Respondent's violation, and order the suspension of Respondent's PACA license until the requested records are made available to AMS for inspection.

Respondent was duly served with a copy of the Notice to Show Cause and did not file an answer within the ten-day period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).¹

On June 5, 2019, Complainant filed a Motion for Decision Without Hearing by Reason of Default ("Motion for Default") and Proposed Decision Without Hearing by Reason of Default ("Proposed Decision"). Respondent has not filed any objections to Complainant's Motion for Default or Proposed Decision.²

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Notice to Show Cause shall be deemed, for purposes of this proceeding, an admission of the allegations in the Notice to Show Cause, 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

¹ United States Postal Service records reflect that the Notice to Show Cause was sent to Respondent via certified mail and delivered on April 29, 2019. Respondent had ten (10) 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 May 9, 2019. Respondent has not filed an answer in this matter.

² United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and returned to the Hearing Clerk's Office as "unclaimed" on August 6, 2019. The Motion for Default and Proposed Decision were then re-mailed (see 7 C.F.R. § 1.132) via regular mail on August 6, 2019 in accordance with 7 C.F.R. § 1.147(c)(1) ("if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address."). Respondent had twenty (20) 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 response was due on or before July 30, 2019. Respondent has not filed any response/objections.

exceptions to the regulatory consequences of an untimely filed answer where, as in the present case, no meritorious objections have been filed.³

As Respondent failed to answer the Notice to Show Cause, 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 is or was a limited liability company organized and existing under the laws of the state of Texas. Respondent's business and mailing address is listed on its PACA license as 2501 West Military Highway, Suite A-18, McAllen, Texas 78503-8948, and is also, upon information and belief, 6500 South 23rd Street, Suite 15, McAllen, Texas 78503.
2. At all times material to the Notice to Show Cause filed, Respondent was licensed and/or operating subject to the provisions of the PACA. Pursuant to the licensing provisions and requirements of the PACA, license number 20100344 was issued to Respondent on December 24, 2009, and its anniversary date is December 24, 2019. The license is currently active.
3. On September 7, 2018, an investigation of Respondent for alleged violations of section 2(4) of the PACA (for failing to pay promptly for produce purchases) was initiated by the PACA Division of AMS. On September 10, 2018, AMS provided Respondent with an investigative notice and a request to review certain of Respondent's records relevant to the investigation.

³ 7 C.F.R. § 1.139; *see supra* note 2.

4. Following the service of the investigative notice, a representative of Respondent engaged in several communications with AMS, wherein AMS repeated the request to view the records identified in the investigative notice letter.
5. On December 21, 2018, a second request to view the records identified in the investigative notice letter was sent to Respondent and received by Respondent on December 26, 2018. In this second December request, Respondent was advised that the records must be made available for inspection by AMS on January 14, 2019.
6. The requested records were not made available for inspection. On March 25, 2019, the AMS sent a final demand letter to inspect the requested records, wherein Respondent was informed that if the requested records were not made available for inspection by April 15, 2019, administrative proceedings seeking a suspension of Respondent's PACA license under section 13(a) of the PACA (7 U.S.C. § 499m(a)) would be initiated immediately. To date, the requested records have not been made available for AMS inspection.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent, during the period from September 10, 2018 to present, refused to permit AMS to inspect Respondent's records during an investigation of alleged violations of section 2(4) of the PACA. Respondent violated section 13(a) of the PACA (7 U.S.C. § 499m(a)) by refusing to permit the inspection of records by AMS during an investigation of violations of the PACA allegedly committed by Respondent.

ORDER


1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.

2. A finding is made that Respondent refused to permit the inspection of records by AMS during an investigation in violation of section 13(a) of the PACA (7 U.S.C. § 499m(a)). The facts and circumstances of Respondent's violation shall be published and Respondent's PACA license is suspended until the requested records are made available to AMS for inspection.

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.

Done at Washington, D.C.,
this 28th day of August 2019



Channing D. Strother
Chief Administrative Law Judge

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