

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Write On Marketing, Inc.,) PACA-D Docket No. 19-J-0102
)
Respondent.)

REC'D - USDA/GALJ/OHC
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DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Christopher Young, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, Agricultural Marketing Service ("AMS").

Preliminary Statement

This is a proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a *et seq.*) ("PACA" or "Act"); 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 Associate Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture ("Complainant" or "AMS"), initiated this proceeding by filing a complaint against Write On Marketing, Inc. ("Respondent") on June 11, 2019. The Complaint alleges that during the period of August 2017 through July 2018, on or about the dates and in the transactions set forth in Appendix A to the Complaint,¹ Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to nine sellers, in the total amount of \$619,195.17, for fifty lots of

¹ "Appendix A" is attached hereto and incorporated by reference.

perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce.² Complainant requests that an Administrative Law Judge find that Respondent willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order that the facts and circumstances of Respondents' violations be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).³

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).⁴

On September 4, 2019, 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.⁵ On October 15, 2019, Complainant filed a Response to Order to Show Cause and Request for Decision Without Hearing Based on Admissions ("Motion for Default") and proposed Decision Without Hearing by Reason of Default ("Proposed Decision").

² Complaint at 2.

³ *Id.* at 4.

⁴ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail but was returned to the Hearing Clerk's Office as "refused" on July 3, 2019. The Complaint was also sent to Respondent's representative, [REDACTED] Owner, via certified mail and returned "unclaimed" on August 5, 2019. In accordance with the Rules of Practice, the Hearing Clerk re-mailed (*see* 7 C.F.R. § 1.142) the Complaint via ordinary mail to Respondent on July 10, 2019 and to [REDACTED] on August 5, 2019. 7 C.F.R. § 1.147(c). 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 August 26, 2019. Respondent has not filed an answer in this matter.

⁵ The Show Cause Order also provided: "Unless the parties have agreed to a consent decision, Complainant's response shall be accompanied by: (1) a proposed decision and order and (2) a motion for adoption of that proposed decision in accordance with the provisions of 7 C.F.R. § 1.139." Show Cause Order at 2.

Respondent failed to respond to the Show Cause Order and has not filed any objections to Complainant's Motion for Default or Proposed Decision.⁶

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 Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an unfiled answer where, as in the present case, no meritorious objections have been filed.⁸

As Respondent failed to answer the Complaint, and upon Complainant's motion for the issuance of a decision without hearing, 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 Write On Marketing, Inc. is or was a corporation incorporated in the state of Wyoming and is or was registered as a corporation in the state of California at the times of the transactions herein. Respondent's business address is or was 1421 W. Cubbon, Santa Ana, California, 92703, and its mailing address is or was 655 S. Main Street, Suite 200, Box

⁶ United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent's representative, [REDACTED] Owner, via certified mail and returned "unclaimed." In accordance with the Rules of Practice, the Hearing Clerk re-mailed (*see* 7 C.F.R. § 1.142) the Motion for Default and Proposed Decision to the same address via ordinary mail on December 17, 2019. 7 C.F.R. § 1.147(c). Respondent had twenty days from the date of service to file objections thereto. 7 C.F.R. § 1.139. 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 objections were due by January 6, 2020. Respondent has not filed any objections.

⁷ 7 C.F.R. § 1.136(c).

⁸ 7 C.F.R. § 1.139; *see supra* note 6 and accompanying text.

#357, Orange, California 92858. "Upon information and belief" of Complainant, Respondent is no longer operating.⁹

2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20171025 was issued to Respondent on August 21, 2017. The license terminated on August 21, 2018, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), after Respondent failed to pay the required annual renewal fee.
3. Respondent, during the period of August 2017 through July 2018, 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 nine sellers for fifty lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$619,195.17.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Write On Marketing, Inc.'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 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.¹⁰

⁹ Complaint at 2.

¹⁰ 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).

4. As Respondent'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.¹¹


ORDER

1. Complainant's Motion for Decision Without Hearing is GRANTED.
2. Respondent Write On Marketing, Inc. is found to have committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).
3. The facts and circumstances of Respondent's violations, as set forth above, shall be published pursuant to 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).

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 9th day of January 2020


Channing D. Strother
Chief Administrative Law Judge

¹¹ See *Baiardi Chain Food Corp.*, 64 Agric. Dec. 1822, 1832 (U.S.D.A. 2005), *petition for review denied*, 482 F.3d 238 (3d Cir. 2002); *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).

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No Pay Tables
W-A-2018-24, Write On Marketing Inc

#	Seller & Location	No. Lots	Commodity	Date Accepted	Date Payment Due	Amount Past Due & Unpaid
1	Harvest Pro, Inc. DBA Harvest Pro Sales Modesto, CA	4	MXFV	07/19/17 to 08/18/17	08/03/17 to 09/10/17	\$37,083.00
2	Freska Produce International, LLC Oxnard, CA	2	Mangos	02/20/18 to 02/25/18	03/02/18 to 03/07/18	\$21,196.00
3	Max Group Corporation City of Industry, CA	1	Mangos	02/21/18	03/03/18	\$7,875.00
4	Freshko Produce Services Fresno, CA	18	MXFV	03/17/18 to 05/19/18	04/14/18 to 06/16/18	\$185,352.67
5	Western Pacific Produce, Inc. Santa Barbara, CA	4	MXFV	04/20/18 to 05/08/18	04/30/18 to 05/18/18	\$75,845.00
6	Ocotillo Produce, Inc., Nogales, AZ	4	MXFV	05/02/18 to 05/31/18	05/12/18 to 06/10/18	\$48,778.50
7	Splendid by Porvenir LLC San Bruno, CA	5	Mangos	05/10/18 to 07/07/18	05/20/18 to 07/17/18	\$63,945.00
8	Pura Vida Farms LLC Brea, CA	2	Watermelons	05/18/18 to 05/23/18	05/28/18 to 06/02/18	\$12,461.00
9	ELM Rock LLC Miami, FL	10	MXFT	06/13/18 to 06/24/18	07/04/18 to 07/15/18	\$166,659.00
9	Sellers	50	Lots			\$519,195.17

APPENDIX A

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3	Max Group Corporation City of Industry, CA	1	Mangos	02/21/18	03/03/18	\$7,875.00
4	Freshko Produce Services Fresno, CA	18	MXFV	03/17/18 to 05/19/18	04/14/18 to 06/16/18	\$185,352.67
5	Western Pacific Produce, Inc. Santa Barbara, CA	4	MXFV	04/20/18 to 05/08/18	04/30/18 to 05/18/18	\$75,845.00
6	Ocotillo Produce, Inc., Nogales, AZ	4	MXFV	05/02/18 to 05/31/18	05/12/18 to 06/10/18	\$48,778.50
7	Splendid by Porvenir LLC San Bruno, CA	5	Mangos	05/10/18 to 07/07/18	05/20/18 to 07/17/18	\$63,945.00
8	Pura Vida Farms LLC Brea, CA	2	Watermelons	05/18/18 to 05/23/18	05/28/18 to 06/02/18	\$12,461.00
9	ELM Rock LLC Miami, FL	10	MXFT	06/13/18 to 06/24/18	07/04/18 to 07/15/18	\$166,659.00
9	Sellers	50	Lots			\$619,195.17

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5	Western Pacific Produce, Inc. Santa Barbara, CA	4	MXFV	04/20/18 to 05/06/18	04/30/18 to 05/18/18	\$75,845.00
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