

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Trinity Fresh Distribution, LLC,) PACA-D Docket No. 20-J-0047
)
Respondent.)

REC'D - USDA/OALJ/OHC
2020 APR 28 PM 1:48

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Buren W. Kidd, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, Deputy Administrator, Fair Trade Practices Program, 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 46.5) (“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 Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture (“Complainant”), initiated this proceeding by filing a complaint against Trinity Fresh Distribution, LLC (“Respondent”) on February 26, 2020. The Complaint alleges that Respondent violated PACA section 2(4) (7 U.S.C. § 499b(4)) by failing to make full payment promptly to ten sellers, in the total amount of \$3,898,506.38, for 735 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce during the period March 2018 through June 2019.¹

¹ See Complaint at 2-3.

Further, the Complaint requests “[t]hat the Administrative Law Judge find that Respondent has willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order the revocation of Respondent’s PACA license pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).”²

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).³

On January 10, 2020, 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 objections to the Motion for Default or Proposed Decision.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

² Complaint at 4. Although Complainant requests revocation of Respondent’s license in the Complaint, the Proposed Decision instead requests that I order the facts and circumstances of Respondent’s violations be published. *See infra* notes 4, 8, and accompanying text.

³ United States Postal Service records reflect that the Complaint was sent to Respondent’s attorney via certified mail and delivered on March 3, 2020. 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 March 23, 2020. 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 attorney via certified mail and delivered on April 6, 2020. 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 April 27, 2020. Respondent has not filed any objections.

the Complaint, unless the parties have agreed to a consent decision.⁵ 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.⁶

As Respondent failed to file a timely 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 Trinity Fresh Distribution, LLC is a limited liability company organized under the laws of the State of California. Respondent's business address is or was 8200 Berry Avenue, Unit 140, Sacramento, California 95828. The Complaint was served on Respondent's attorney.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of PACA. License number 2007 1088 was issued to Respondent on July 12, 2007. The license terminated on July 12, 2019, pursuant to PACA section 4(a) (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.
3. Respondent, during the period March 2018 through January 2019, on or about the dates and in the transactions set forth in Appendix A to the Complaint, incorporated herein by reference, failed to make full payment promptly to ten sellers for 735 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$3,898,506.38.

⁵ 7 C.F.R. § 1.136(c).

⁶ 7 C.F.R. § 1.139; *see supra* note 4 and accompanying text.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Trinity Fresh Distribution, LLC's failure to make full payment promptly with respect to the 735 transactions referenced in Finding of Fact No. 3 above, and set forth in Appendix A to the Complaint, constitutes willful, flagrant, and repeated violations of PACA section 2(4) (7 U.S.C. § 499b(4)), for which the below Order is issued.
3. The total unpaid balance due to sellers represents more than a *de minimis* amount, thereby obviating the need for a hearing in this matter.⁷
4. As Respondent's license terminated prior to the institution of this proceeding, the appropriate sanction is publication of the facts and circumstances of Respondent's violations.⁸

ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. A finding is made that Respondent Trinity Fresh Distribution, LLC has committed willful, flagrant, and repeated violations of PACA section 2(4) (7 U.S.C. § 499b(4)).
3. The facts and circumstances of Respondent's PACA violations, as set forth above, shall be published pursuant to PACA section 8(a) (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).

⁷ 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).

⁸ 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).

Copies of this Decision and Order shall be served upon the parties and counsel by the
Hearing Clerk.

Done at Washington, D.C.,
this 28th day of April 2020



Channing D. Strother
Chief Administrative Law Judge

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