

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Poblano Fresh Produce Corp.,) PACA-D Docket No. 20-J-0158
)
Respondent.)

REC'D - USDA/FOALJ/DHC
2020 NOV 24 PM 4:14

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. Part 46) ("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, Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture, initiated this proceeding against Respondent Poblano Fresh Produce Corp. by filing a complaint on September 3, 2020. The Complaint alleged that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to one (1) seller for thirteen (13) lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate commerce, in the total amount of \$230,918.00. The Complaint alleges the violations occurred in commerce during the period of October 2019 through November 2019, on or about

the dates and in the transactions set forth in Appendix A to the Complaint, incorporated herein by reference. The Complaint requested that an Administrative Law Judge find that Respondent has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and order the publication of the facts and circumstances of Respondent's violations 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).¹

On October 14, 2020, 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 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 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

¹ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on September 14, 2020. 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 workday. 7 C.F.R. § 1.147(h). In this case, Respondent's answer was due on or before October 5, 2020. 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 delivered on October 31, 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 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 workday. 7 C.F.R. § 1.147(h). In this case, Respondent's objections were due by November 20, 2020. Respondent has not filed any objections.

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.³

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 is a corporation organized and existing under the laws of the State of California. Respondent's business address is 14120 Dunia Street, Baldwin Park, California, 91706. The Complaint in this case can be served on Respondent at its business address and on Respondent's President and 100% shareholder, whose address will be provided to the Office of Hearing Clerk for service purposes.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20140203 was issued to Respondent on November 21, 2013. This license was terminated on November 21, 2019 when respondent failed to renew its PACA license. Respondent applied for a new PACA license on February 3, 2020 but withdrew that application ten days later.
3. On June 16, 2020, a PACA reparation complaint on behalf of seller DMB Packing Corp., doing business as The DiMare Company, listed in Appendix A to this Complaint, was filed under section 5(a) and (b) of the PACA (7 U.S.C. § 499c(a) and (b)) and section 6 of the PACA (7 U.S.C. § 499f). Respondent failed to file an answer to the reparation complaint, and

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

a default order in the amount of \$230,918.00 for the same debt listed in Appendix A to the instant disciplinary complaint, was issued on August 13, 2020, pursuant to section 7 of the PACA (7 U.S.C. § 499g).

4. Respondent, during the period October 2019 through November 2019, on or about the dates and in the transactions set forth in Appendix A attached hereto and incorporated by reference, failed to make full payment promptly to one (1) seller for thirteen (13) lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate commerce, in the total amount of \$230,918.00.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent's failure to make full payment promptly with respect to the thirteen (13) lots referenced in Finding of Fact No. 4 above, and 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 Order below is issued.
3. The total unpaid balance due to produce seller represents more than a *de minimis* amount, thereby obviating the need for a hearing in this matter.⁴

ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. A finding is made that Respondent has committed willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

⁴ 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).

3. The facts and circumstances of Respondent Poblano Fresh Produce Corp.'s PACA violations 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.

Done at Washington, D.C.,

This 24th day of November 2020



Channing D. Strother
Chief Administrative Law Judge

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