

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/DALJ/DHC
2020 DEC 21 PM8:36

In re:)	
)	
Enson Group, LLC)	PACA Docket No. D-20-J-0105
d/b/a Eternal Food Service,)	
)	
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 March 16, 2020, alleged that Respondent had committed willful violations of section 2(4) of the PACA by failing to make full payment promptly. The Complaint sought the issuance of a decision finding that Respondent had committed willful, flagrant, and repeated violations of section 2(4) of the PACA, and ordering that Respondent's PACA license be revoked (or suspended) pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

On April 13, 2020, Respondent answered the Complaint, denied the material claims and allegations therein, and asserted several affirmative defenses, including full and timely payment of all Vendors for all transactions involving "perishable agricultural commodities" during the period beginning in December of 2018 and ending in April of 2019, and in accordance with both the course of dealing between the parties and the terms and conditions of such transactions, as agreed by the parties thereto. Respondent now acknowledges, however, that the vendor payment agreements were not in writing and made prior to the time the transactions took place, in accordance with the PACA.

At this time, Respondent agrees to the entry of a Consent Decision to settle this matter without further litigation-- Respondent agrees that the Secretary has jurisdiction in this matter and waives all further proceedings in this matter. Respondent further waives all rights to seek judicial

review and otherwise challenge or contest the validity of this decision, including waiving challenges to the Administrative Law Judge's authority to enter this Decision and Order under the Administrative Procedure Act and the Constitution of the United States, and waives any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 et seq.) for fees and other expenses incurred by Respondent in connection with this proceeding or any action against any USDA employee in their individual capacity.

The parties agree that the Secretary has jurisdiction to issue an order in this proceeding, and agree to the entry of a Consent Decision and Order without further procedure or hearing pursuant to the consent decision provisions 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 (7 C.F.R. §1.138).

Findings of Fact

1. Respondent is a corporation organized and existing under the laws of the State of Ohio. Respondent's business address is 605 North Wayne Avenue, Cincinnati, Ohio 45215.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 2013 1346 was issued to Respondent on September 12, 2013. The license is due for renewal on September 12, 2020.
3. Respondent, during the period December 2018 through April 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 and as required by the PACA to twelve (12) sellers for 58 lots of perishable agricultural commodities with Respondent purchased, received, and accepted in interstate and foreign commerce.
4. All sellers listed in the Complaint were paid before the filing of the Complaint.

Conclusions

Respondent's failure to make full payment promptly in accordance with the PACA to 12 sellers of the agreed purchase prices of the perishable agricultural commodities described in the Findings of Fact above constitutes flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

A finding is made that Respondent has committed flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. §499b(4)), and Respondent's PACA license shall be suspended for a period of 30 days pursuant to section 8 of the PACA (7 U.S.C. §499h).

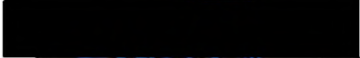
However, that finding and license suspension is held in abeyance so long as Respondent pays a civil penalty of \$6,500.00 immediately upon issuance of this Consent Decision and Order. Payment of the civil penalty shall be made by certified check or bank check made payable to the "United States Treasury" and delivered to the United States Department of Agriculture, Agricultural Marketing Service, PACA Division, 1400 Independence Avenue, S.W. Room 1510 South Bldg., Washington, D.C. 20250. Upon payment of the civil penalty in proper form and amount to Complainant as stated above, the above finding and suspension will be permanently abated and the case will be closed.

This Order shall become final and effective upon issuance. Copies hereof shall be served

upon the parties.

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CHRISTOPHER YOUNG
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YOUNG

Christopher Young, Esq.
Attorney for Complainant



August T. Marszewski, Esq.
For Respondent

12/21/20
Date signed

12/15/2020
Date signed

Done at Washington, D.C.

this 21 day of December, 2020.



Jill S. Clifton
Administrative Law Judge