

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0339

In re: Osteen Marketing LLC,
Respondent

Decision and Order

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (PACA) and the regulations issued thereunder (7 C.F.R. Part 46)(Regulations), instituted by a Complaint filed on September 6, 2013, by the Associate Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, United States Department of Agriculture.

Complainant alleged in its Complaint that Respondent Osteen Marketing LLC (Respondent) committed willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to six (6) sellers for 45 lots of perishable agricultural commodities which it purchased, received, and accepted in interstate commerce, in the total amount of \$447,519.10 and requested that findings be entered that Respondent willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)), and order the facts and circumstances of these violations published.

On October 21, 2013, Respondent filed a one-page Answer to the Complaint with the Department's Hearing Clerk. In the fourth full paragraph of the Answer, Respondent stated, "Several debtors [sic] including Four Rivers Produce, Central Produce, National Onion, and Pure Country Produce have already filed law suits against Osteen Marketing and been awarded their claims and have placed judgments' against Osteen and William Osteen personally." Respondent,

in its Answer, does not address the allegations in the Complaint regarding the two remaining sellers.

On November 21, 2013, Complainant filed a motion seeking a Decision Without Hearing by Reason of Admissions, based on the admissions made by Respondent in its Answer. Having carefully considered the pleadings and the authority cited by Complainant, the following Findings of fact, Conclusions of Law and Order are entered pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Pertinent Statutory Provisions

Section 2(4) of the PACA (7 U.S.C. § 499b(4)) provides:

It shall be unlawful in or in connection with any transaction in interstate or foreign commerce:

....

(4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold, or contracted to be bought, sold, or consigned, in such commerce by such dealer, or the purchase or sale of which in such commerce is negotiated by such broker; or *to fail or refuse truly and correctly to account and make full payment promptly in respect of any transaction in such commodity to the person with whom such transaction is had*; or to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction; or to fail to maintain the trust as required under section 5(c) of this title. However, this paragraph shall not be considered to make the good faith offer, solicitation, payment, or receipt of collateral fees and expenses, in and of itself, unlawful under this Act. (Emphasis added.)

Section 8(a) of the PACA (7 U.S.C. § 499h(a)) provides:

(a) Whenever (1) the Secretary determines, as provided in section 6 of this Act (7 U.S.C. § 499f) that any commission merchant, dealer, or broker has violated any of the provisions of section 2 of this Act (7 U.S.C. § 499b), or (2) any commission merchant, dealer, or broker has been found guilty in a Federal court of having violated section 14(b) of this Act (7 U.S.C. § 499n(b)), the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety

days, except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender.

Findings of Fact

1. Osteen Marketing LLC (Respondent) is a limited liability company organized and existing under the laws of the state of Wisconsin. Respondent is not currently operating. Respondent's last known business address was the home address of its sole principal.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 2009 0620 was issued to Respondent on April 7, 2009. The license terminated on April 7, 2012 pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)) when Respondent failed to pay the required annual renewal fee.
3. Respondent, during the period August 2, 2010, through November 14, 2011, failed to make full payment promptly to six (6) sellers of the agreed purchase prices, or balances thereof, for 45 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in the course of interstate commerce, in the total amount of \$447,519.10.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent admitted in its Answer that it failed to pay for perishable agricultural commodities it purchased, received, and accepted in interstate commerce from four (4) of the sellers named in the Complaint; the Complaint alleged that Respondent failed to pay these four sellers in the total amount of \$341,608.50.
3. Respondent failed to address the remaining two sellers named in the Complaint, which the Complaint alleged that Respondent failed to pay in a total amount of an additional \$105,910.60. Failure to specifically respond to the allegations in the Complaint regarding the

remaining two sellers is deemed an admission of those allegations and Respondent will be deemed to have admitted to failing to pay the remaining two sellers as was alleged.

4. Respondent willfully, flagrantly and repeatedly violated Section 2(4) of the Act (7 U.S.C. § 499b(4)).

Order

1. The facts and circumstances of the above violations herein shall be published.
2. This Order shall become final and effective without further proceeding 35 days after service thereof upon Respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies hereof shall be served upon the parties.

January 7, 2014

Peter M. Davenport

Peter M. Davenport
Chief Administrative Law Judge