

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OAL/OHC
2021 JAN 28 AM 11:19

In re:)
)
B & B Organics, Inc.,) PACA Docket No. D-20-J-0136
)
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 July 6, 2020, alleged that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA by failing to make full payment promptly to 23 sellers of the agreed purchase prices in the total amount of \$1,038,238.09 for 390 lots of perishable agricultural commodities, which were purchased, received, and accepted in the course of interstate and foreign commerce, during the period of June 2017 through April 2019.

The Complaint sought the issuance of an order finding that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA, and publishing the facts and circumstances of the PACA violations pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

The Complaint was served upon Respondent, and 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 have now agreed to the entry of a Consent Decision and Order as set forth herein. Therefore, this Consent Decision and Order is entered 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 or was a corporation organized and existing under the laws of the state of Indiana, and its mailing address was 949 East 12th Street, Mishawaka, Indiana 46544.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20030774 was issued to Respondent on March 18, 2003. Respondent's license was designated as "active with bankruptcy" when Respondent filed for Chapter 7 bankruptcy on April 26, 2019, and Respondent's license terminated on March 18, 2020, 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. The Secretary has jurisdiction to issue an order in this proceeding.
4. Respondent, during the period June 2017 through April 2019, on or about the dates and in the transactions set forth in Appendix A to the Complaint in this case, failed to make full payment promptly to 23 sellers for 390 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign

commerce, in the total amount of \$1,038,238.09.

5. On April 26, 2019, Respondent filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. § 701 et seq.) in the United States Bankruptcy Court, Northern District of Indiana. This petition was designated Case No. 19-30729-hcd. The Schedule F filed in the bankruptcy (Appendix B to this Complaint) admits that collectively 22 of the 23 sellers listed in Appendix A to this Complaint are owed undisputed unsecured produce debt in the amount of \$956,962.00.

Conclusions

Respondent's failure to make full payment promptly to 23 sellers of the agreed purchase prices of the perishable agricultural commodities described in Finding of Fact paragraph 4, above, constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

A finding is issued that has engaged in willful, flagrant, and repeated violations of the PACA for failing to make full payment promptly to 23 sellers for 390 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and

foreign commerce, in the total amount of \$1,038,238.09, and the facts and circumstances of Respondent's PACA violations shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

This Order shall become final and effective upon issuance.

Copies hereof shall be served upon the parties.

CHRISTOPHER YOUNG
Digitally signed by
CHRISTOPHER YOUNG
Date: 2021.01.28
09:55:04 -05'00'

Christopher Young, Esq.
Attorney for Complainant

Date signed



Cynthia Boynton
For Respondent

1/25/2021
Date signed

Done at Washington, D.C.

this 28th day of January, 2021



Channing D. Strother
Chief Administrative Law Judge