

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Florida Cool Cargo, Inc.,) PACA-D Docket No. 20-J-0164
)
Respondent.)

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Christopher Young, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the 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 46.45) (“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 Florida Cool Cargo, Inc. (“Respondent”) on September 29, 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 five sellers for fourteen lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$115,806.65.¹ Further, the Complaint requests:

¹ Complaint at 2-3.

1. That *unless Respondent fails to file an answer within the time allowed*, or admits all the material allegations of this Complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the PACA;
2. That 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 publication of the facts and circumstances of Respondent’s violations pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Complaint at 3 (emphasis added).

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).²

On January 15, 2021, I issued an order directing the parties to show cause (“Show Cause Order”), not later than twenty days after that date, why default should not be entered against Respondent.³

On May 3, 2021, Complainant filed a response to the Show Cause Order, requesting a decision without hearing by reason of default (“Motion for Default”), and a proposed decision without hearing by reason of default (“Proposed Decision”). Respondent failed to respond to the Show Cause Order and has not filed any objections to Complainant’s Motion for Default or

² United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on October 30, 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 November 19, 2020. Respondent has not filed an answer.

³ The Show Cause Order also directed: “Unless the parties have agreed to a consent decision, Complainant’s response shall be accompanied by: (1) a proposed decision and order and (2) a motion for adoption of that proposed decision and order in accordance with the provisions of 7 C.F.R. § 1.139.” Show Cause Order at 2.

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 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 an 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 Florida Cool Cargo, Inc. was a corporation organized and existing under the laws of the State of Florida. Respondent's business address was 1431 NW 3rd Street, Miami, Florida 33142. Respondent ceased operations and was dissolved with the State of Florida on September 27, 2019.
2. At all times material herein, Respondent was operation subject to the provisions of PACA. Respondent was never issued a license number under PACA.

⁴ United States Postal Service records reflect that Complainant's Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on May 15, 2021. 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 on or before June 4, 2021. Respondent has not filed any objections.

⁵ 7 C.F.R. § 1.136(c).

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

3. Respondent, during the period May 2019 through July 2019, on or about the dates set forth in Appendix A to the Complaint (attached hereto and incorporated by reference), failed to make full payment promptly to five sellers for fourteen lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$115,806.65.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Florida Cool Cargo, Inc.'s failure to pay promptly with respect to the 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 was never issued a license number under PACA, the appropriate sanction is publication of the facts and circumstances of Respondent's violations.⁸

ORDER

1. Complainant's Motion for Default is GRANTED.
2. A finding is made that Respondent Florida Cool Cargo, Inc. has committed willful, flagrant, and repeated violations of PACA section 2(4) (7 U.S.C. § 499b(4)).

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).

3. The facts and circumstances of Respondent's PACA violations 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).

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

Done at Washington, D.C.,
this 8th day of June 2021

CHANNING STROTHER Digitally signed by CHANNING STROTHER
Date: 2021.06.08 13:32:11 -04'00'

Channing D. Strother
Chief Administrative Law Judge

Hearing Clerk's Office
United States Department of Agriculture
Stop 9203, South Building, Room 1031
1400 Independence Avenue, SW
Washington, DC 20250-9203
Tel: 202-720-4443
Fax: 844-325-6940
SM.OHA.HearingClerks@USDA.GOV

Florida Cool Cargo, Inc. Appendix A

REC'D - USDA/OALJ/OHC
2020 SEP 29 AM 8:30

Seller's Name	No. Lots	Commodity	Dates Accepted	Dates Payment Due	Amounts Past Due & Unpaid
1 Internatural Marketing, Inc. Lake Worth, FL	1	MXFV	05/08/19	05/23/19	\$8,508.15
2 Ben Bud Growers, Inc. Lighthouse Point, FL	2	MXV	05/08/19 to 05/18/19	05/29/19 to 06/08/19	\$7,794.00
3 Empresas Villar USA LLC Harper, IA	5	MXV	05/14/19 to 05/23/19	06/04/19 to 06/13/19	\$47,997.00
4 Agrofresh International LLC Doral, FL	2	Blackberries	05/17/19 to 05/22/19	05/27/19 to 06/01/19	\$8,441.50
5 Pijanowsky Oranges Corp. d/b/a PJ Citrus Doral, FL	4	MXF	06/11/19 to 07/05/19	06/26/19 to 07/20/19	\$43,066.00
5 Sellers	14	Lots		Total	<u>\$115,806.65</u>