

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Southern Produce Distributors, Inc.,) PACA Docket No. D-20-J-0101
)
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 June 11, 2019, 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 34 sellers of the agreed purchase prices in the total amount of \$3,488,367.28 for 665 lots of perishable agricultural commodities, which were purchased, received, and accepted in the course of interstate and foreign commerce, during the period of April 2017 through June 2018. Respondent filed an Answer in this disciplinary proceeding on July 2, 2019, in which it denied making full payment promptly for any transactions occurring on or after April 20, 2018.

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 revocation of Respondent's PACA license. Subsequent to the filing of the Complaint, Respondent's license terminated on October 4, 2019 pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), after Respondent failed to pay the required annual renewal fee. Therefore, at his time, publication of the facts and circumstances of Respondent's PACA violations in lieu of revocation is the appropriate course of action, pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a))(see also *In re: Scamcorp, Inc., d/b/a Goodness Greenness*, 57 Agric. Dec. 527, 547-549 (1998)).

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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 a corporation organized and existing under the laws of the state of North Carolina. Respondent's business address is or was 111 West Center Street North, Faison, North Carolina 28341.

2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 2005 0004 was issued to Respondent on October 4, 2004. This license terminated on October 4, 2019, 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. On April 20, 2018, Respondent filed a Voluntary Petition pursuant to Chapter 11

of the Bankruptcy Code (11 U.S.C. § 1101 et seq.) in the United States Bankruptcy Court, Eastern District of North Carolina. This petition was designated Case No. 18-02010-5-SWH.

4. Respondent admits in its Bankruptcy Schedule F filed in the above-referenced bankruptcy case that it owes¹ 33 of the 34 creditors/sellers listed in Appendix A to this Complaint undisputed unsecured produce debt and that it failed to make full payment promptly to these 33 creditors/sellers. (See Appendix B to the Complaint).

Conclusions

Respondent's failure to make full payment promptly to these 33 sellers of the agreed purchase prices of the perishable agricultural commodities described in Finding of Fact paragraphs 3 and 4, above, constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

¹ Schedule F also lists unpaid produce debt to 7 sellers not listed in the Complaint in the amount of \$100,237.57.

Order

A finding is issued that Respondent has engaged in willful, flagrant, and repeated violations of the PACA for failing to pay the produce sellers listed in the Complaint and its Appendices, 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: 2021.06.21
 10:57:16 -0400

Christopher Young, Esq.
 Attorney for Complainant

6/21/2021

Date signed



Steven C. Newton, II
 Attorney for Respondent

4/19/2021

Date signed

Done at Washington, D.C.

this day of _____, 2021

CHANNING
 STROTHER

Digitally signed by CHANNING
 STROTHER
 Date: 2021.06.25 12:05:19 -0400

Channing D. Strother
 Chief Administrative Law Judge