

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Rain Forest Produce, Inc.,) PACA-D Docket No. 21-J-0024
)
Respondent.)

REC'D - USDA/OALJ/OHC
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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, for the Complainant, 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 Rain Forest Produce, Inc. (“Respondent”) on April 7, 2021. The Complaint alleges that Respondent violated PACA section 2(4) (7 U.S.C. § 499b(4)) by failing to make full payment promptly to thirty-three sellers for 519 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate commerce, in the total amount of \$1,576,260.00.¹ Further, the Complaint requests:

¹ Complaint at 2.

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; and
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 3-4 (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 June 16, 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 July 21, 2021, Complainant filed (1) a response to the Show Cause Order and request for decision without hearing by reason of default ("Motion for Default") and (2) a proposed decision without hearing by reason of default ("Proposed Decision"). Respondent failed to

² United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on May 3, 2021. 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 May 24, 2021. 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.

respond to the Show Cause Order and has not filed any objections to Complainant's Motion for Default or 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 a timely answer to 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 Rain Forest Produce, Inc. is or was a corporation organized and existing under the laws of the State of California. Respondent's business address was 1601 East Olympic Boulevard, Building 100, Suite 108, Los Angeles, California 90021.

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 August 2, 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 August 23, 2021. Respondent has not filed any objections.

⁵ 7 C.F.R. § 1.136(c).

⁶ See *supra* note 4 and accompanying text.

2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of PACA. License number 20130929 was issued to Respondent on June 6, 2013. This license was suspended due to unpaid reparation awards, pursuant to PACA section 7(d) (7 U.S.C. § 499g(d)), and the license terminated after Respondent failed to pay the required annual renewal fee on June 6, 2020, pursuant to PACA section 4(a) (7 U.S.C. § 499d(a)). Upon information and belief, Respondent ceased operation in February 2020.
3. Respondent, during the period October 2018 through February 2020, on or about the dates and in the transactions set forth in Appendix A attached to the Complaint and incorporated by reference, failed to make full payment promptly to thirty-three sellers for 519 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate commerce, in the total amount of \$1,576,260.00.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Rain Forest Produce, 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

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).

4. As Respondent's PACA license was terminated, the appropriate sanction is publication of the facts and circumstances of Respondent's violations.⁸

ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. A finding is made that Respondent Rain Forest Produce, Inc. has committed willful, flagrant, and repeated violations of PACA section 2(4) (7 U.S.C. § 499b(4)).
3. Respondent's PACA violations shall be published in accordance with 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 31st day of August 2021

**CHANNING
STROTHER**

Digitally signed by CHANNING
STROTHER
Date: 2021.08.31 15:16:13 -0400'

Channing D. Strother
Chief Administrative Law Judge

⁸ See *Baiardi Chain Food Corp.*, 64 Agric. Dec. 1822, 1832 (U.S.D.A. 2005), *pet. 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).

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