

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: )  
)  
Colorado Mushroom Farm, LLC, ) MPRCIA Docket No. 21-J-0053  
)  
Respondent. )

REC'D - USDA/OALJ/HCO'  
2021 NOV 9 4:04 PM'

**DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT**

Appearance:

*Brian Hill, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Administrator of the Agricultural Marketing Service (“AMS”)*

**Preliminary Statement**

This is a proceeding under the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. §§ 6101 – 6112) (“Mushroom Act”); the Mushroom Promotion, Research, and Consumer Information Order (7 C.F.R. Part 1209) (“Mushroom Order”); 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 Administrator of the Agricultural Marketing Service, United States Department of Agriculture (“Complainant”), initiated this proceeding by filing a complaint against Colorado Mushroom Farm, LLC (“Respondent”) August 4, 2021. The Complaint alleges that Respondent “willfully violated the Mushroom Act and the Mushroom Order by failure to pay assessments, late fees, and interest in full.”<sup>1</sup> Further, the Complaint requests

1. That *unless the respondent fails to file an answer within the time allowed therefor, or files an answer admitting all the material allegations of the complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the Mushroom Act; and*

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<sup>1</sup> Complaint at 3.

2. That the Secretary issue such order or orders as are authorized by the Mushroom Act and warranted under the circumstances, including an order assessing penalties against the respondent and an order to cease and desist from violating the Act and the Order, in accordance with 7 U.S.C. § 6104(j), § 6107(c), and 7 C.F.R. § 1209.251(e).

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).<sup>2</sup>

On October 14, 2021, Complainant filed a proposed decision and order by reason of default (“Proposed Decision”) and motion for adoption thereof (“Motion for Default”).

Complainant now requests that I (1) find that Respondent “has admitted violating the Mushroom Act as alleged in the complaint” and (2) order that Respondent “be assessed \$24,812.53 in assessments, late-payment charges, and interest on the unpaid assessments” and assessed a civil penalty of \$5,000.<sup>3</sup> Respondent has not filed any objections to Complainant’s Motion for Default or Proposed Decision.<sup>4</sup>

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<sup>2</sup> United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail and delivered on September 17, 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 October 7, 2021. Respondent has not filed an answer.

<sup>3</sup> Motion for Default at 2-3.

<sup>4</sup> 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 October 19, 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

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.<sup>5</sup> Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely answer where, as in the present case, no meritorious objections have been filed.<sup>6</sup>

As Respondent failed to answer to the Complaint, and upon Complainant's motion for the issuance of a decision without hearing, 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 Colorado Mushroom, LLC is a limited liability company whose principal place of business is 10719 Road 5 South, Alamosa, Colorado 81101 and whose mailing address is P.O. Box 2002, Alamosa, Colorado 81101.
2. At all times material herein, Respondent was a first handler as defined in the Mushroom Act, 7 U.S.C. § 6102(5), and the Mushroom Order (7 C.F.R. § 1209.6).
3. At all times material herein, Respondent was a person as defined in the Mushroom Act, 7 U.S.C. § 6102(10), and the Mushroom Order, 7 C.F.R. § 1209.14.

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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 November 8, 2021. Respondent has not filed any objections.

<sup>5</sup> 7 C.F.R. § 1.136(c).

<sup>6</sup> See *supra* note 4 and accompanying text.

4. At all times material herein, Respondent was a producer as defined in the Mushroom Act, 7 U.S.C. § 6102(11), and the Mushroom Order, 7 C.F.R. § 1209.15.
5. The Mushroom Order is administered by the Mushroom Council. The Mushroom Council's programs and expenses are funded by assessments paid to the Mushroom Council by each first handler who receives mushrooms from a producer or who prepares for marketing or markets mushrooms of its own production and by importers who import mushrooms into the United States.
6. As a first handler who markets mushrooms of its own production as defined in the Mushroom Order, Respondent was subject to payment of assessments to the Mushroom Council pursuant to section 1209.51(c) of the Mushroom Order (7 C.F.R. § 1209.51(c)).
7. Pursuant to section 1209.51 of the Mushroom Order (7 C.F.R. § 1209.51), the Mushroom Council assessed Respondent \$24,812.53, which includes late-payment charges and interest for unpaid assessments due to the Mushroom Council for mushrooms marketed to consumers in the United States from January 2020 through November 2020.
8. On eleven occasions from January 2020 through November 2020, Respondent violated section 6104(g) of the Mushroom Act (7 U.S.C. § 6104(g)) and section 1209.51 of the Mushroom Order (7 C.F.R. § 1209.51) by failing to timely remit to the Mushroom Council monthly assessments, late fees, and interest for assessments from Respondent's own production of mushrooms marketed to consumers in the United States. As of January 31, 2021, Respondent owed the Mushroom Council \$24,812.53 in assessments newly accrued

during the 2020 calendar year, late fees, and interest. Interest continues to accrue on that balance each subsequent month.

9. The Mushroom Council notified Respondent on numerous occasions, both by electronic correspondence and formal letters, of its continuing violations of the Mushroom Order and the penalties pursuant to the Mushroom Order that might be incurred. Additionally, the Agricultural Marketing Service notified Respondent in writing, on March 9, 2021 and May 13, 2021, of past-due assessments. Respondent has been unresponsive to each attempt to resolve the outstanding non-payment of assessments.
10. Pursuant to section 6104(j) of the Mushroom Act (7 U.S.C. § 6104(j)) and section 1209.251(e) of the Mushroom Order (7 C.F.R. § 1209.251(e)), the Secretary may assess a one-time limited-payment charge in the amount of ten percent of the assessments due before interest charges have accrued for each late payment of assessments.
11. Pursuant to section 6107(c) of the Mushroom Act (7 U.S.C. § 6107(c)), the Secretary may assess a civil penalty for each violation and may issue an order requiring Respondent to cease and desist from violating the Order.<sup>7</sup>

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<sup>7</sup> The Mushroom Act states that the Secretary shall assess a civil penalty of not more than \$5,000 for each violation. 7 U.S.C. § 6107(c)(1). The penalty was amended by 7 C.F.R. § 3.91(b)(1)(xxviii) (effective December 5, 2017) pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 to a minimum of \$880 and a maximum of \$8,797 per violation. The penalty was again amended by 7 C.F.R. § 3.91(b)(1)(xxviii) (effective March 14, 2018) by making inflation adjustments pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 to a minimum of \$898 and a maximum of \$8,977 per violation.

The Mushroom Act states that the Secretary shall assess a civil penalty of not more than \$5,000 for each violation. The penalty was amended by 7 C.F.R. § 3.91(b)(1)(xxviii) (effective December 5, 2017) pursuant to Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 to a minimum of \$880 and a maximum of \$8,797 per violation. The penalty was again amended by 7 C.F.R. § 3.91(b)(1)( xxviii) (effective March 14, 2018) by making inflation adjustments pursuant to Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 to a minimum of \$898 and a maximum of \$8,977 per violation.

### **Conclusions**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent Colorado Mushroom Farm, LLC has willfully violated the Mushroom Act and the Mushroom Order by failure to pay assessments, late fees, and interest in full.

### **ORDER**

1. Complainant's Motion for Default is GRANTED.
2. Respondent Colorado Mushroom Farm, LLC is assessed \$24,812.53, which includes late-payment charges and interest for unpaid assessments. This sum shall be paid by certified check made payable to the Mushroom Council and reference Docket No. 21-J-0053.
3. Respondent is assessed a civil penalty of \$5,000. The civil penalty shall be paid by certified check made payable to the Treasurer of the United States and reference Docket No. 21-J-0053.

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 9th day of November 2021

**CHANNING  
STROTHER**

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STROTHER  
Date: 2021.11.09 15:34:39  
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Channing D. Strother  
Chief Administrative Law Judge

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