

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0458
and
Docket No. 12-0601

In re:

RDM International, Inc.,

Respondent.

DECISION AND ORDER ON THE RECORD

The instant matters involve whether RDM International, Inc. (“Respondent”) is fit to be licensed under the Perishable Agricultural Commodities Act (“PACA”).

I. PROCEDURAL HISTORY

This action was initiated by a Notice to Show Cause and Request for Expedited Hearing (assigned Docket No. 12-0458) filed with the Hearing Clerk for the Office of Administrative Law Judges (“OALJ”) on June 4, 2012 by the Associate Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, United States of Agriculture (“AMS”; “USDA”; “Complainant”). The Notice was issued in response Respondent’s application for a license. The Notice alleged that Respondent had failed to make full payment promptly of the agreed purchase prices, or balances thereof, for perishable agricultural commodities which Respondent purchased, received, and accepted in the course of interstate and foreign commerce, thereby making Respondent unfit to be granted a license under PACA.

Complainant also moved to consolidate the matter filed on June 4, 2012 with another matter that was not yet filed. The second complaint was filed on August 27, 2012 and alleged that

Respondent had committed willful, flagrant and repeated violations of PACA by failing to make full payment promptly to eight (8) sellers for purchases of 74 lots of perishable agricultural commodities in the course of interstate and foreign commerce during the period November 13, 2008 through June 17, 2011, in the total amount of \$832,934.95. Respondent failed to file an Answer to the Complaint assigned Docket No. 12-0601, but submitted additional filings with the first case. By Order issued January 23, 2013, I consolidated cases No. 12-0458 and 12-0601. I also directed Respondent to Show Cause Why a Decision Without Hearing Should Not Be Issued, allowing Respondent thirty (30) days from the date of service of the Order to demonstrate that it made full payment by February 15, 2013, of the \$832,934.95, which Complainant alleged was owed by Respondent to eight (8) produce sellers. Respondent failed to respond to the Order.

On May 13, 2013, Complainant moved to renew its Order directing Respondent to show cause why a Decision and Order on the record should not be issued. On June 14, 2013, Respondent requested an extension of time to respond. By Order issued June 24, 2013, I allowed Respondent until July 1, 2013 to answer the motion. By correspondence dated July 2, 2013, Respondent asked for clarification that it would be allowed twenty (20) days from the date of service of the motion on June 28, 2013 to respond. By email addressed to both the representative for Respondent and counsel for Complainant, I confirmed that Respondent had twenty days to respond, or until July 18, 2013, pursuant to 7 C.F.R. §1.139.

As of the date of this Decision and Order, Respondent has failed to respond to Complainant's motion. Considering the age of these consolidated actions, and the many opportunities afforded to Respondent to defend Complainant's allegations, I find it appropriate to GRANT Complainant's Order. This Decision and Order is based upon the evidence of record,

associated with Complainant's motions and complaints, as well as all of Respondent's submissions and the arguments of the parties.

II. DISCUSSION

The record establishes that on March 27, 2012, the United States District Court for the Central District of California ordered default judgment in favor of plaintiff Newland North America Foods, Inc., against Respondent for a valid PACA Trust debt in the amount of \$400,013.37, including interest at the statutory rate of 7% per annum. *Newland North America Foods, Inc., v. RDM International*, Docket 12-cv-00323, U.S. D.C for Central District of California. I take official notice of this finding and conclude that Respondent failed to pay a PACA debt in the amount of \$400,013.37, due to Newland North America Foods, Inc.

USDA conducted an investigation into Respondent's PACA related activities, and established that as of May 9, 2013, an additional amount of \$404,243.67 was due to six (6) of the remaining seven (7) sellers identified in Complainant's complaint. Complainant's investigation failed to establish that \$32,370.23 of the total of \$832,934.95 allegedly unpaid by Respondent was owed to the seventh remaining seller.

In its submissions, Respondent did not contest the allegations that it had failed to make full payment promptly. Respondent discussed actions that it intended to pursue against some of the produce suppliers listed in the Complaint. Respondent failed to specifically address the evidence demonstrating lack of payment.

All of the evidence of record demonstrates that Respondent failed to make payment to at least eight (8) produce sellers within the time provided by law. When a complaint alleges the failure to make full payment promptly under PACA, if Respondent fails to completely comply

with the Act within the first of either 120 days after the complaint is served upon Respondent, or the date of the hearing, then the case shall be considered a “no pay” case that merits the sanction of license revocation. *In re Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec., 527, 548-549 (1998).

As Respondent has failed to respond to Orders and Notices with proof of payment within the time frame consistent with *Scamcorp*, supra, it is appropriate to consider the instant actions as a “no pay” case. The record establishes that Respondent failed to make full and prompt payment for produce purchases in willful, flagrant and repeated violation of section 2(4) of the PACA, 7 U.S.C. §499b(4).

III. FINDINGS OF FACT

1. RDM International, Inc. is a corporation organized and existing under the laws of the State of California, with a business and mailing address of 11643 Otsego Street, N. Hollywood, California 91601.
2. Respondent is not currently licensed under PACA, but is subject to the licensing requirements of PACA.
3. On March 5, 2007, Respondent was issued PACA License Number 20070534, which terminated on March 5, 2012.
4. Since the date its license terminated, Respondent continued to conduct business subject to PACA.
5. Respondent’s PACA license records list Robert D. Moore as the sole principal and 100% shareholder of Respondent.
6. At all times material to the instant actions, Respondent has operated under the

management, direction and control of Robert D. Moore.

7. During the period from November 13, 2008 through June 17, 2011, Respondent failed to make full payment promptly to eight (8) sellers for purchases of 74 lots of perishable agricultural commodities in the course of interstate and foreign commerce, in the amount of \$832,934.95, of which \$804,257.04 remained unpaid as of May 19, 2013.
8. Respondent submitted an application to USDA for a PACA license on May 7, 2012.

IV. CONCLUSIONS OF LAW

1. The Secretary has jurisdiction over Respondent and the subject matter of these actions.
2. Respondent's PACA License Number 20070534 terminated on March 5, 2012, when Respondent failed to pay the required annual fee. See, section 4(a) of PACA, 7 U.S.C. § 499d(a).
3. Respondent's failure to make full payment promptly to eight (8) sellers in the total of \$832,934.95 for 74 lots of perishable agricultural commodities constitutes willful, repeated and flagrant violations of section 2(4) of the Act.
4. Respondent is unfit to be licensed under PACA, as Respondent's willful, repeated and flagrant violations of section 2(4) of the Act under the management, direction and control of its sole principal and 100% shareholder Robert D. Moore, are practices of a character prohibited by PACA.

ORDER

Respondent has committed willful, repeated and flagrant violations of section 2(4) of the Act, and the facts and circumstance of the violations shall be published.

Pursuant to sections 4 and 8 of PACA, 7 U.S.C. §§ 499d and 499h, the Secretary's refusal

to issue a PACA license to Respondent is affirmed.

This Order shall take effect on the 11th day after this Decision become final.

Pursuant to the Rules of Practice, this Decision shall become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within thirty (30) days after service as provided in 7 C.F.R. §§ 1.139 and 1.145.

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

Done this 23rd day of July, 2013 at Washington, D.C.

Janice K. Bullard
Administrative Law Judge