



UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)
Penny Tsigaris,)
d/b/a Manavi Produce Corp.,)
Respondent.)

PACA Docket No. D-17-0217

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearances:

Christopher P. Young, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, for the Complainant, Agricultural Marketing Service ("AMS"); and

Penny Tsigaris, d/b/a Manavi Produce Corp., pro se Respondent.

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499 *et seq.*) (“PACA”); the regulations promulgated pursuant to PACA (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 Associate Deputy Administrator for the Specialty Crops Program, Agricultural Marketing Service (“Complainant”), initiated this matter against Penny Tsigaris, d/b/a Manavi Produce Corp. (“Respondent”), by filing a complaint on February 7, 2017. The Complaint alleged that, during the period February 2015 through January 2016, on or about the dates set forth in Appendix A to the Complaint and incorporated herein by reference, Respondent willfully violated section 2(4) of PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to three sellers, in the total amount of \$385,021.85, for twenty-one

lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce. The Complaint requested that an Administrative Law Judge find that Respondent committed willful, flagrant, and repeated violations of section 2(4) of PACA (7 U.S.C. § 499b(4)) and order that the facts and circumstances of the violations be published.

The Complaint was initially sent via certified mail to Respondent's counsel, Lee Pakulski,¹ and delivered on February 13, 2017.² More than four months passed without an answer from Attorney Pakulski or Respondent.

On July 17, 2017, the Hearing Clerk sent Attorney Pakulski a letter advising that no answer had been filed. On July 28, 2017, Attorney Pakulski filed a fax with the Hearing Clerk's Office, which stated: "This letter is to inform you that Manavi Produce and Peny [sic] Tsigaris are no longer represented by our office."³

On July 31, 2017, the Hearing Clerk's Office sent Respondent, Penny Tsigaris, a copy of the Complaint via certified mail. However, United States Postal Service records indicate that the certified mailing was unsuccessful.⁴

On November 3, 2017, Complainant filed a Motion for Decision Without Hearing ("Motion for Default") and proposed Decision Without Hearing ("Proposed Decision") on the basis that Respondent failed to file a timely answer.

On April 13, 2018, Complainant's counsel provided the Hearing Clerks' Office an

¹ The Complaint identified Attorney Pakulski as Respondent's "counsel of record during the investigation in this case." Compl. ¶ II(a).

² USPS Tracking No. 70133020000107008877.

³ Fax at 1.

⁴ See USPS Tracking No. 70153010000151873460 ("In-Transit" status since September 17, 2017).

updated address with which to serve Respondent. The Hearing Clerk's Office subsequently sent copies of the Complaint, Motion for Default, and Proposed Decision via certified mail to Respondent's new address. However, on May 21, 2018, the mailing was returned to the Hearing Clerk's Office marked "unclaimed."⁵

Pursuant to the Rules of Practice, the Hearing Clerk re-mailed the documents to the same address via ordinary mail on June 5, 2018. Rule 1.147 provides:

Any complaint or . . . proposed decision and motion for adoption thereof upon failure to file an answer . . . shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of delivery by certified or registered mail to the last known principal place o f business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, *Provided that*, if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.

7 C.F.R. § 1.147(c)(1). Thus, the Complaint, Motion for Default, and Proposed Dccision are deemed to have been received by Respondent on June 5, 2018.

Respondent was duly served with the Complaint on June 5, 2018 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(a)).⁶ Further, Respondent was properly served with the Motion for Default yet filed no objections thereto.⁷

⁵ USPS Tracking No. 70153010000151873583.

⁶ The Hearing Clerk's records reflect that the Complaint was re-mailed to Respondent's address on June 5, 2018. 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 by June 25, 2018. Respondent has not filed an answer.

⁷ The Hearing Clerk's records reflect that the Motion for Default and Proposed Decision were re-mailed to Respondent's address on June 5, 2018. Respondent had twenty days from the date of service to file objections to Complainant's motion. 7 C.F.R. § 1.139. Weekends and federal holidays shall not be

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. 7 C.F.R. § 1.136(c). As Respondent failed to answer the Complaint, 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. Penny Tsigaris, d/b/a Manavi Produce Corp. (“Respondent”), is or was doing business in the state of New York. Respondent’s business and mailing address is or was 3001 New Street, Oceanside, New York 15721.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of PACA. License number 20140930 was issued to Respondent on July 8, 2014. The license terminated on July 8, 2016, pursuant to section 4(a) of PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.
3. Respondent, during the period February 2015 through January 2016, on or about the dates and in the transactions set forth in Appendix A to the Complaint, failed to make full payment promptly to three sellers for twenty-one lots of perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$385,021.85.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent willfully violated section 2(4) of PACA (7 U.S.C. § 499b(4)).

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 by June 25, 2018. Respondent has not filed any objections.

3. Respondent's failure to make full payment promptly of the agreed purchase prices, or balances thereof, for the perishable agricultural commodities that Respondent purchased, received, and accepted in interstate and foreign commerce constitutes willful, flagrant, and repeated violations of section 2(4) of PACA (7 U.S.C. § 499b(4)).
4. Respondent's failure to make full payment promptly with respect to the transactions referenced in Finding of Fact No. 3 above constitutes willful, flagrant, and repeated violations of section 2(4) of PACA (7 U.S.C. § 499b(4)).
5. As Respondent's PACA license terminated prior to the institution of this proceeding, the appropriate sanction is publication of the facts and circumstances of Respondent's violations.

ORDER

1. Respondent is found to have committed willful, flagrant, and repeated violations of section 2(4) of PACA (7 U.S.C. § 499b(4)).
2. The facts and circumstances of Respondent's violations, as set forth above, shall be published pursuant to section 8(a) of PACA (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 by the Hearing Clerk upon each of the parties, with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 3d day of July, 2018

[Redacted]
Channing D. Strother
Acting Chief Administrative Law Judge

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