

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)
)
J.E. Corcoran Company,) PACA Docket No. D-17-0253
)
Respondent)

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 D.C. 20250, for the Complainant, Agricultural Marketing Service (AMS); and

Kelly E. McCauley, Esq., of Pittsburgh, PA, for the Respondent, J.E. Corcoran Company.

Preliminary Statement

This is a disciplinary proceeding brought pursuant to the provisions of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (“PACA”), the regulations promulgated pursuant to the 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, PACA Division, Agricultural Marketing Service (“Complainant”), initiated this proceeding against J.E. Corcoran Company (“Respondent”) by filing a disciplinary complaint on April 10, 2017. The Complaint alleged that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) during the period December 2014 through June 2016 (on or about the dates and in the transactions set forth in Appendix A to the Complaint, incorporated herein by reference) by failing to make full payment promptly to forty-one sellers in the total amount of \$2,521,981.11 for 585 lots of

perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate commerce.

The Complaint requested that an Administrative Law Judge find that Respondent committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order that Respondent's PACA license be revoked pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)). Respondent's license terminated on April 21, 2017, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee. The appropriate sanction is now publication of the facts and circumstances of Respondent's PACA violations pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).¹

Respondent was duly served with 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 November 7, 2017, I issued an order directing the parties to show cause, not later than twenty days after that date, why default should not be entered against Respondent ("Show Cause Order"). On November 27, 2017, Complainant filed a Response to Show Cause Order and Request for Decision Without Hearing by Reason of Default ("Motion for Default") and a proposed Decision Without Hearing by Reason of Default ("Proposed Decision"). Respondent failed to

¹ See *Scamcorp, Inc.*, 57 Agric. Dec. 527, 547-49 (U.S.D.A. 1998).

² United States Postal Service records reflect that a copy of the Complaint was sent via certified mail and delivered to both Respondent's majority owner and Respondent's attorney on April 15, 2017. Respondent had twenty (20) 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 May 5, 2017. Respondent did not file an answer on or before that 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. 7 C.F.R. § 1.136(c). Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer where, as in the present case, no meritorious objections have been filed. 7 C.F.R. § 1.139; see *infra* note 4.

respond to the Show Cause Order within the required time³ and has not filed any objections to Complainant's Motion for Default.⁴

As Respondent failed to answer the Complaint, and upon motion of Complainant for issuance of a decision without hearing by reason of default, the following 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 is or was a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Respondent's business and mailing address is or was 2 Rutgers Road, Building C, Crafton, Pennsylvania 15205.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 19711452 was issued to Respondent on April 21, 1971. The license terminated on April 21, 2017, 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. Respondent, during the period December 2014 through June 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 forty-one sellers for 585 lots of perishable agricultural commodities,

³ The Show Cause Order was issued on November 7, 2017. Therefore, the parties were required to file responses on or before November 27, 2017.

⁴ The Hearing Clerk's records reflect that the Motion for Default and Proposed Decision were sent Respondent's majority owner and Respondent's attorney on November 28, 2017. 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 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(g), (h). In this case, Respondent's objections were due by December 18, 2017. Respondent has not filed any objections.

which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$2,521,981.11.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent'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 section 2(4) of the PACA (7 U.S.C. § 499b(4)), for which the below Order is issued.


ORDER

1. A finding is made that Respondent has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).
2. The facts and circumstances of the violations shall be published pursuant to section 8(a) of the 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 9th day of January, 2018


Bobbie J. McCartney
Chief Administrative Law Judge

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