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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	
)	PACA Docket No. D-16-0183
Accel Services, LLC,)	
)	
Respondent)	Decision 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

Respondent, pro se.

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) [Act or PACA], instituted by a Complaint filed on September 19, 2016, by the Associate Deputy Administrator, Specialty Crops Program, Agricultural Marketing Service [AMS], United States Department of Agriculture [USDA].

The Complaint alleges that Respondent, during the period September 2014 through January 2016, failed to make full payment promptly to 19 sellers in the total amount of \$452,292.92 for 58 lots of perishable agricultural commodities, as listed in Appendix A to the Complaint and incorporated therein by reference, which Respondent purchased, received, and accepted in interstate and foreign commerce.

The Complaint further alleges that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) and that the failure of Respondent to pay sellers promptly, as more fully described in section 46.2(aa) of the Regulations (7 C.F.R. § 46.2 (aa)), of the agreed purchase prices for 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 the PACA (7 U.S.C. § 499b(4)).

The Complaint requests that pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)), 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 that Respondent's PACA license be revoked.

The Complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary (7 C.F.R. § 1.130 *et seq.*) [Rules of Practice] were served on Respondent by certified mail on September 23, 2016.

Respondent was duly served with the Complaint pursuant to section 1.147 (c) of the Rules of Practice and did not file an answer to the Complaint within the time period prescribed by section 1.136 (7 C.F.R. § 1.136) of those rules.¹ Failure to file an answer constitutes an admission of the

¹ United States Postal Service records reflect that the Complaint was sent via certified mail and delivered to the address of Respondent's owner of record on September 23, 2016. Respondent had twenty (20) days from the date of service to file a response. 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(g), (h). In this case, Respondent's answer was due by October 13, 2016. 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 and

factual allegations in the Complaint. 7 C.F.R. § 1.136(c). Furthermore, the failure to file a timely answer constitutes a waiver of hearing. 7 C.F.R. § 1.139.

On April 6, 2017, Complainant filed a “Motion for a Decision Without Hearing by Reason of Default” and a proposed “Decision Without Hearing by Reason of Default.” As of this date, Respondent has not filed any objections thereto.²

Accordingly, 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 state of New York. Respondent’s business and mailing address is or was 707 Executive Blvd., Valley Cottage, New York 10989.

2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20141018 was issued to Respondent on July 31, 2014. The license is due to be renewed on July 31, 2017.

Procedure do not provide for exceptions to the regulatory consequences of an untimely filed answer.

² The Hearing Clerk’s records reflect that the Motion for Default and Proposed Decision were sent to Respondent’s business and mailing address on April 6, 2017. Respondent had twenty (20) 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 April 26, 2017. Respondent did not file any objections by that date.

3. Respondent, during the period September 2014 through January 2016, on or about the dates and in the transactions set forth in Appendix A to the Complaint and incorporated herein by reference, failed to make full payment promptly to 19 sellers for 58 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$452,292.92.

Conclusions

Respondent's failure to pay sellers promptly, as more fully described in section 46.2(aa) of the Regulations (7 C.F.R. § 46.2 (aa)), of the agreed purchase prices for 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 the PACA (7 U.S.C. § 499b(4)).

ORDER

Respondent's PACA license is hereby revoked.

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, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 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 20th day of May, 2017


Bobbie J. McCartney
Chief Administrative Law Judge

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