

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA Docket No. D-18-0010
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)
Forest City Weingart Produce Co.,)
)
)
Respondent)

Consent Decision and Order

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (PACA). The Complaint filed herein, on November 2, 2017, alleged that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA by failing to make full payment promptly to 23 sellers of the agreed purchase prices in the total amount of \$716,689.16 for 159 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce, during the period of October 2014 through May 2017. The Complaint sought the issuance of an order finding that Respondent had committed willful, flagrant and repeated violations of section 2(4) of the PACA, and revoking¹ Respondent's PACA license.

The Complaint was served upon Respondent, Respondent agrees that the Secretary has jurisdiction in this matter, and waives all further proceedings in this matter. Respondent further waives all rights to seek judicial review and otherwise challenge or contest the validity of this decision, including waiving challenges to the Administrative Law Judge's authority to enter this

¹ Respondent's PACA license terminated on February 16, 2018, when Respondent failed to pay the required annual fee. Therefore, at this time, publication of the facts and circumstances surrounding Respondent's PACA violations is the appropriate sanction.

Decision and Order under the Administrative Procedure Act and the Constitution of the United States, and waives any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 *et seq.*) for fees and other expenses incurred by Respondent in connection with this proceeding or any action against any USDA employee in their individual capacity.

The parties have now agreed to the entry of a Consent Decision and Order as set forth herein. Therefore, this Consent Decision and Order is entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*)(Rules of Practice) applicable to this proceeding (7 C.F.R. §1.138).

Findings of Fact

1. Respondent is or was a corporation organized and existing under the laws of the state of Ohio. Respondent's business and mailing address was 4000 Orange Avenue, Units 21-25, Cleveland, Ohio 44115.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 19880710 was issued to Respondent on February 16, 1988. This license terminated on February 16, 2018, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual fee.
3. The Secretary has jurisdiction to issue an order in this proceeding.
4. During the period October 2014 through May 2017 and in the transactions set out in Appendix A to the Complaint in this case, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 23 sellers, 159 lots of perishable agricultural commodities, and failed to make full payment promptly of the agreed purchase prices, in the

total amount of \$716,689.16.

Conclusions

Respondent's failure to make full payment promptly to 23 sellers of the agreed purchase prices of the perishable agricultural commodities described in Finding of Fact paragraph 3, above, constitutes flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

A finding is issued that Respondent has engaged in flagrant and repeated violations of the PACA, and the facts and circumstances of the violation shall be published. Any employment sanctions attendant to this Order will take effect upon issuance of this Consent Decision and Order.

This Order shall become final and effective upon issuance.

Copies hereof shall be served upon the parties.

[Redacted signature]

Christopher Young, Esq.
Attorney for Complainant

9/18/18
Date signed

[Redacted signature]

Seth Briskin, Esq.
Attorney for Respondent

9-12-18
Date Signed

Done at Washington, D.C.

this 21st day of September, 2018

[Redacted signature]

Channing D. Strother
Acting Chief Administrative Law Judge