

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-02-0002
)	
William Dubinsky & Son, Inc.,)	
)	
Respondent)	<u>Decision Without Hearing</u>
)	

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) hereinafter referred to as the "Act", instituted by a Complaint filed on October 23, 2001, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleges that during the period October 1999 through December 2000 Respondent purchased, received, and accepted, in interstate and foreign commerce, from 138 sellers, 967 lots of perishable agricultural commodities in the course of interstate and foreign commerce, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$1,795,045.82.

A copy of the Complaint was served upon Respondent; Respondent submitted an answer in which it generally denied the allegations of the Complaint pertaining to its failure to make payment promptly. During the period of March through June 2005, a follow up investigation was conducted by the PACA Branch of the Agricultural Marketing Service which revealed that

as of June 2005, at least 20 of the sellers listed in the Complaint were still owed \$90,024.65.¹ Based on the results of the investigation, Complainant filed a Motion for an Order Requiring Respondent to Show Cause Why a Decision Without Hearing Should Not Be Issued ; Respondent did not answer the Motion. Hearing no objection, in January 2006, the Chief Administrative Law Judge issued a Notice To Show Cause Why A Decision Without Hearing Should Not Be Issued, based upon Complainant's allegation in its Motion, substantiated by affidavit, that Respondent failed to pay the produce debt alleged in the Complaint within 120 days of the service of the Complaint. Service of that Order to the addresses listed in the file in the Hearing Clerk=s Office was unsuccessful. On May 16, 2006 Complainant made a motion for Decision Without Hearing. Complainant argued in its motion that as Respondent was properly served with the disciplinary complaint in this case, was on notice of the proceedings against it, and filed an answer to the complaint, Respondent was obligated to keep the Hearing Clerk=s Office apprised of its current mailing addresses and relevant contact information. Respondent failed to do so. Accordingly, and as Respondent=s failure to fulfill its obligation resulted in unsuccessful service of the January 2006 Order to Respondent to Show Cause, I am persuaded by Complainant's arguments and grant its motion for the issuance of a Decision Without Hearing finding that Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA and publishing Respondent=s violations.

Under the sanction policy enunciated by the Judicial Officer in In re Scamcorp, Inc., d/b/a Goodness Greeness, 57 Agric. Dec. 527, 547 (1998),

¹ Mr. Nefferdorf attempted to contact 32 out of the 138 sellers listed in the complaint. 12 out of 32 sellers never responded to Mr. Nefferdorf=s inquiries. As indicated in his affidavit, Mr. Nefferdorf tried numerous times to contact the remaining 12 sellers to no avail.

"PACA requires *full payment promptly*, and commission merchants, dealers and brokers are required to be in compliance with the payment provisions of the PACA at all times....In any PACA disciplinary proceeding in which it is shown that a [R]espondent has failed to pay in accordance with the PACA and is not in full compliance with the PACA within 120 days after the [C]omplaint is served on that [R]espondent, or the date of the hearing, whichever occurs first, the PACA case will be treated as a "no-pay" case In any "no-pay" case in which the violations are flagrant or repeated, the license of a PACA licensee, shown to have violated the payment provisions of the PACA, will be revoked." Id. at 548-549.

According to the Judicial Officer=s policy set forth in Scamcorp, in this case, Respondent had 120 days from the date the complaint was served upon it, or on or about March 15, 2002, to come into full compliance with the PACA. Therefore, as Respondent was not in full compliance by that date, this case should be treated as a No pay case for purposes of sanction, which warrants the issuance of a Decision Without Hearing finding that Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA and ordering that Respondent=s violations be published.

As Respondent has failed to Show Cause Why a Decision Without Hearing Should Not Be Issued, the following Decision and Order is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent is a corporation organized and existing under the laws of the state of Connecticut. Its mailing address is 101 Reserve Road, Hartford, Connecticut 06114.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. Pursuant to the licensing provisions of the Act, license number 770517 was issued to Respondent on January 14, 1977. This license terminated on January 14, 2001, when

Respondent failed to pay the required annual fee.

3. As more fully set forth in paragraph III of the Complaint, during the period October 1999 through December 2000, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 138 sellers, 967 lots of fruits and vegetables, all being perishable agricultural commodities, and failed to make full payment promptly of the agreed purchase prices, in the total amount of \$1,795,045.82.

4. Respondent failed to pay the produce debt described above and to come into full compliance with the PACA within 120 days of the filing of the Complaint against it.

Conclusions

Respondent's failure to make full payment promptly with respect to the 967 transactions set forth in Finding of Fact No. 3, above, constitutes willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b), for which the Order below is issued.

Order

A finding is made that Respondent has committed willful, flagrant and repeated violations of Section 2 of the Act (7 U.S.C. § 499b), and the violations of Respondent shall be published.

This order shall take effect on the 11th day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 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 hereof shall be served upon parties.

Done at Washington, D.C.

this 21st day of August, 2006

Marc R. Hillson
Administrative Law Judge