

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

PACA Docket No. D-07-0028

In re: CARIBE TROPICAL FOODS, INC.;
ALBERTINO PINA and
MARIA I. PINA, d/b/a
CARIBE TROPICAL FOODS, INC.,

Respondents

DEFAULT DECISION AND ORDER

This is a disciplinary proceeding brought under the Perishable Agricultural Commodities Act of 1930, as amended (7 U.S.C. § 499a, *et seq.*) (“PACA”), instituted by a Complaint filed by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleges that during the period of March 2004 and October 2004, the Respondents failed to make full payment promptly to a seller of the agreed purchase prices in the total amount of \$614,945.83 for 139 invoices of perishable agricultural commodities which the Respondents purchased, received, and accepted in the course of interstate and foreign commerce.

Copies of the Complaint were sent to the Respondents by certified mail on November 21, 2006; however, the Post Office returned the mailings as “unclaimed” on December 20, 2006. In accordance with Rule 1.147(c) of the Rules of Practice Governing

Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.147(c), the Hearing Clerk re-mailed copies of the Complaint to the Respondents by regular mail on December 20, 2006.

The Respondents failed to file an Answer as required by Rule 1.136 (7 C.F.R. § 1.136) within the time allotted. On February 7, 2007, the Hearing Clerk received a facsimile transmission from Russell D. Raskin, Esquire, Raskin & Berman, Providence, Rhode Island, indicating that the Complaint was contested as to both “defendants” and indicating that Maria Pina “has already been determined by the Federal District Court for the District of Rhode Island not to be responsibly connected with Caribe Tropical Foods, Inc. Turbana Corporation vs. Caribe Tropical Foods, Inc., Albertino Pina and Maria I. Pina A/K/A Maria E. Pina, C.A. No. 04-4631 (D.R.I. 2004)[.]”¹

Even assuming, *pro arguendo*, that the facsimile had been received within the time allotted for the filing of an answer, the letter received on February 7, 2007 is not denominated as an answer, it does not bear the docket number assigned to this action and fails to admit, deny, or explain the allegations set forth in the Complaint. *See* 7 C.F.R. § 1.136. It is well settled that entry of default is appropriate where, as in this case, the Respondent has failed to deny the material allegations of the Complaint. *In re: Barnesville Livestock Sales Co., et al.* 60 Agric. Dec. 804, 805 (2002); *In re Van Buren Fruit Exchange, Inc.* 51 Agric. Dec. 744 (1992). As the Respondent’s letter [Answer] failed to clearly deny the material allegations of the Complaint, it fails to meet with the specific requirements for an Answer under the Rules of Practice (*See* 7 C.F.R. § 1.136(b)). The material facts alleged in the complaint are accordingly admitted and the

¹ The facsimile transmission does not bear the docket number of this action and indicates that it was previously sent on December 18, “but inadvertently to the Department of Agricultural [sic] only.

following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

FINDINGS OF FACT

1. Respondent Caribe Tropical Foods, Inc. (“Caribe”) was incorporated as a Rhode Island corporation on September 9, 1991, but whose corporate charter was revoked on or before June 30, 1993. Notwithstanding the revocation of its charter, Respondent Caribe continued to operate under the name Caribe Tropical Foods, Inc., having a business address at 53 Hawes Street, Central Falls, Rhode Island 02863, under the direction of its owners, the individual Respondents at all times material to this Decision.

2. By virtue of the revocation of its corporate charter, at all times material to this Decision, Respondent Caribe was an unincorporated partnership or general association, owned, operated, directed by, and under the control of the individual Respondents, Albertino Pina and Maria I. Pina, whose business and home address is 53 Hawes Street, Central Falls, Rhode Island 02863.

3. At all times material to this Decision, Respondent Caribe was licensed by PACA under PACA License No. 2000-0870. The said license was terminated on May 2, 2005, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499d(a)) for failure to pay the annual license renewal fee.

4. At all times material to this Decision, Respondent Caribe and the individual Respondents conducted business subject to the PACA.

5. During the period March 4, 2004 to October 3, 2004, the Respondents failed to make full payment to the Turbana Corporation of the agreed purchase prices for

139 lots of perishable agricultural commodities in the total amount of \$614,945.83, which the Respondents purchased, received, and accepted in interstate and foreign commerce.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. For the reasons set forth in the Findings of Fact, the Respondents willfully, flagrantly, and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)).

ORDER

1. The Respondents, Caribe Tropical Foods, Inc., Albertino Pina, and Maria I. Pina committed willful, flagrant, and repeated violations of Section 2(4) of the PACA (7 U.S.C. § 499b(4)) during the period March 4, 2004 through October 3, 2004, and the facts and circumstances shall be published.

2. This Decision will become final without further proceedings 35 days after it is served unless a party to the proceeding appeals 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 of this Decision and Order shall be served on the parties.

Done at Washington, D.C.
May 11, 2007

PETER M. DAVENPORT
Administrative Law Judge

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