

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-08-0048
)	
Mich-Kim, Inc., d/b/a Ellis Fleisher)	
Produce Company and d/b/a)	
Dichter Bros. & Glass, Inc.)	
)	
Respondent)	Decision Without Hearing
)	by Reason of Default

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.; hereinafter “PACA”), instituted by a Complaint filed on January 23, 2008, by the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (hereinafter “Complainant”). The Complaint alleges that during the period May 24, 2006, through March 18, 2007, Respondent Mich-Kim, Inc., d/b/a Ellis Fleisher Produce Company and d/b/a Dichter Bros. & Glass, Inc. (hereinafter “Respondent”), failed to make full payment promptly to 38 sellers of the agreed purchase prices in the total amount of \$1,438,415.00 for 507 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce.

A copy of the Complaint was sent to Respondent’s president and one-hundred percent shareholder, Ellis Fleisher, by certified mail on January 23, 2008, and it was returned to the Hearing Clerk as “unclaimed” on February 19, 2008. Accordingly, pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151; hereinafter “Rules of Practice”), the Hearing Clerk re-mailed the Complaint using regular mail on February 20, 2008. That mailing by regular mail is deemed

to constitute service on Respondent pursuant to section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)). Respondent has not answered the Complaint.¹ The time for filing an answer having run, and upon the motion of Complainant for the issuance of a Decision Without Hearing by Reason of Default, 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. Mich-Kim, Inc., d/b/a Ellis Fleisher Produce Company and d/b/a Dichter Bros. & Glass, Inc., is a corporation organized and existing under the laws of the State of Pennsylvania. Its business and mailing address was 3301 S. Galloway Street #93, Philadelphia, Pennsylvania 19148. Respondent ceased business operations on March 9, 2007. Respondent's current mailing addresses are c/o Ellis Fleisher, 13 Foxcroft Court, Voorhees, New Jersey 08043 and c/o Eugene Malady, Eugene J. Malady, LLC, 200 East State Street, Suite 309, Media, Pennsylvania 19063.

2. At all times material to this decision, Respondent was licensed under the provisions of the PACA. License number 1983-0535 was issued to Respondent on February 4, 1983. This license has been renewed annually and was next subject to renewal on or before February 4, 2008. This license was suspended on May 10, 2007, pursuant to section 7(d) of the PACA (7 U.S.C. § 499g(d)), when Respondent failed to pay a reparation award, and was terminated on February 4, 2008, 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 May 24, 2006, through March 18, 2007, failed to make full payment promptly to 38 sellers of the agreed purchase prices in the total amount of

¹ A copy of the Complaint was also sent to Respondent's attorney, Eugene J. Malady, on January 23, 2008. The Complaint was served on Respondent's attorney on January 25, 2008. Respondent's attorney also has failed to file an answer on behalf of Respondent.

\$1,438,415.00 for 507 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce.

Conclusions

Respondent's failure to make full payment promptly to 38 sellers in the total amount of \$1,438,415.00 for 507 lots of perishable agricultural commodities above constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), for which the order below is issued.

Order

Respondent is found to have committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and the facts and circumstances of the violations shall be published.

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

Pursuant to the Rules of Practice, 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, 1.145).

Copies of this decision and order shall be served upon the parties.

Done at Washington, D.C.

this 9th day of May, 2008

Marc R. Hillson
Administrative Law Judge

