

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-05-0011
)	
Abba Produce, 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. § 499 et seq.; hereinafter “PACA”), instituted by a Complaint filed on May 13, 2005, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service (hereinafter “Complainant”). Complainant filed the First Amended Complaint on March 2, 2007. The First Amended Complaint alleges that during the period June 20, 2003, through February 29, 2004, Respondent Abba Produce, Inc. (hereinafter “Respondent”) failed to make full payment promptly to nine (9) sellers of the agreed purchase prices in the total amount of \$628,607.74 for 124 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce.

Pursuant to sections 304 and 306 of the New York Business Corporation Law (N.Y. BUS. CORP. LAW §§ 304, 306), Complainant served the First Amended Complaint on the New York Secretary of State as agent for Respondent. A U.S. Marshall personally served the First Amended Complaint on the New York Secretary of State on March 20, 2007, in accordance with section 1.147(b) of the Rules of Practice Governing Formal Adjudicatory Proceedings Under Various Statutes (7 C.F.R. § 1.147(b); hereinafter “Rules of Practice”). The New York Secretary of State formally accepted service of the First Amended Complaint on March 21, 2007. Pursuant

to section 1.147(e)(4), Complainant filed a certificate of service on March 30, 2007. Under section 306(b)(1) of the New York Business Corporation Law (N.Y. BUS. CORP. LAW § 306(b)(1)), service of process on Respondent was completed when the New York Secretary of State accepted service of the First Amended Complaint on March 21, 2007. Respondent has not answered the First Amended Complaint. The time for filing an answer having run, and upon 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. Abba Produce, Inc. (hereinafter “Respondent”) is a corporation organized and existing under the laws of the State of New York. Its business address was 1290 Oakpoint Boulevard, Bronx, New York 10474-6903. Its mailing address was 68-03 242nd Street, Apt. 30D, Douglaston, New York 11362-2600. In accordance with section 304(a) of the New York Business Corporation Law (N.Y. BUS. CORP. LAW § 304(a)), Respondent’s agent for service of process is the New York Secretary of State, State of New York Department of State, 41 State Street, Albany, New York 12231.

2. At all times material to this decision, Respondent was licensed under the provisions of the PACA. License number 20031196 was issued to Respondent on June 26, 2003. This license terminated on June 26, 2004, 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 June 20, 2003, through February 29, 2004, failed to make full payment promptly to nine (9) sellers of the agreed purchase prices in the total amount of \$628,607.74 for 124 lots of perishable agricultural commodities, which Respondent

purchased, received, and accepted in interstate and foreign commerce.

Conclusions

Respondent's failure to make full payment promptly to nine (9) sellers in the total amount of \$628,607.74 for 124 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 governing procedures under the PACA, 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 hereof shall be served upon the parties.

Done at Washington, D.C.

this 1st day of October, 2007

Marc R. Hillson
Chief Administrative Law Judge