

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

PACA Docket No. 10-0140

In re: SALYER AMERICAN FRESH FOODS, INC.,

Respondent

DEFAULT DECISION AND ORDER

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*; hereinafter “PACA” or the “Act”), instituted by a Complaint filed on February 26, 2010, by the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (hereinafter “Complainant”). An Amended Complaint was filed on March 19, 2010. The Amended Complaint alleges that: (a) during the period March 6, 2009, through June 4, 2009, Respondent failed to make full payment promptly to 10 sellers of the agreed purchase prices in the amount of \$257,629.50 for 55 lots of perishable agricultural commodities, which Respondent purchased, received, and sold in the course of, or in contemplation of, interstate or foreign commerce and (b) during the period April 9, 2009 through August 9, 2009, Respondent failed to remit net proceeds, or balances thereof, in the total amount of \$2,040,186.51 to 20 growers for 2,479,143 containers of perishable agricultural commodities which Respondent, while acting as a growers’ agent, sold in the course of, or in contemplation of, interstate or foreign commerce.

A copy of the Amended Complaint was sent to Respondent and Respondent's counsel, Malcolm S. Segal, by certified mail on March 19, 2010.¹ The Amended Complaint contained allegations identical to the findings of fact, infra, and advised Respondent that an Answer must be filed with the Hearing Clerk within 20 days after receipt of the Complaint, and that "[f]ailure to file an answer shall constitute an admission of all the material allegations of this Complaint . . ." (Complaint at 3).

On April 20, 2010, Mr. Segal sent a letter to the Hearing Clerk advising that his office was not representing the Respondent in this matter, that his letter was not a Response to the Amended Complaint or an appearance by counsel, and that service was not effected by sending the Amended Complaint to his office. His letter further indicated that a felony criminal case against Frederick Scott Salyer, the sole owner of the Respondent is ongoing, and that a Federal Magistrate Judge had recent issued a stay order in a civil case filed in the United States District Court against Mr. Salyer.

The Complainant has filed a Response to Mr. Segal's letter, noting that Respondent was served with a copy of the Amended Complaint by certified mail at its last known business address as listed on his PACA license on March 22, 2010 in accordance with Section 1.147 of the Rules of Practice. 7 C.F.R. §1.147. Although Mr. Segal indicated that service upon him was ineffective, service was made upon him consistent with his earlier statement to the PACA Branch Investigator that service of all documents were to be made upon him.

The Response also addressed the issue of the stay order in United States District Court for the Eastern District of California which stayed further discovery in the civil case of *Robin Brewer v. Scott Salyer*, 1:06-cv-01324. The instant action is not against

¹ The Complaint was delivered to both Respondent and Respondent's counsel on March 22, 2010.

Frederick Scott Salyer, but rather is brought against Salyer American Fresh Foods, Inc. As Mr. Segal expressly has disclaimed representation of the Respondent, the only Motion pending is that of the Complainant for entry of a Default Decision based upon the failure of the Respondent to file an Answer.

Accordingly, the Motion of Complainant will be granted and the following Findings of Fact, Conclusions of Law and Order will be entered without further procedure pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Salyer American Fresh Foods, Inc., (hereinafter “Respondent”), is a corporation registered in the State of California. Respondent’s business address was 21 Lower Ragsdale Drive, Monterey, California, 93940.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 19871666 was issued to respondent on July 27, 1987. This license has been renewed annually and is next subject to renewal on or before July 27, 2010. However, this license was suspended on October 7, 2009, for failure to pay reparation awards, pursuant to section 7(d) of the PACA (7 U.S.C. § 499g).
3. Respondent, during the period March 6, 2009, through June 4, 2009, failed to make full payment promptly to 10 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$257,629.50 for 55 lots of perishable agricultural commodities, which Respondent purchased, received, and sold in the course of, or in contemplation of, interstate or foreign commerce.
4. Respondent, during the period April 9, 2009 through August 9, 2009, failed to remit net proceeds, or balances thereof, in the total amount of \$2,040,186.51 to 20

growers for 2,479,143 containers of perishable agricultural commodities which Respondent, while acting as a growers' agent, sold in the course of, or in contemplation of, interstate or foreign commerce.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent's failure to make full payment promptly with respect to the Findings of Fact in paragraphs 3 and 4 above constitutes willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

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 (4)), and, as a result, Respondent's license is hereby revoked.

Pursuant to the Rules of Practice, this Decision will become final without further proceedings thirty-five days after service hereof unless appealed to the Secretary by a party to the proceeding within thirty 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 will be served upon the parties by the Hearing Clerk.

Done at Washington, D.C.
June 4, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge