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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA Docket No. 12-0231
)
Empire Fresh Cuts, LLC)
)
Respondent) Consent 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). The Complaint alleged that Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to 13 sellers of the agreed purchase prices, or the balances thereof, in the total amount of \$1,022,415.12 for 119 lots of perishable agricultural commodities that Respondent purchased, received, and accepted in the course of, or in contemplation of, interstate and foreign commerce during the period of July 27, 2009, through July 4, 2010. The Complaint sought an Order finding that Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and publication thereof.

The parties have now agreed to the entry of a Consent Decision and Order as set forth herein. Therefore, this Consent Decision and Order is entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.; hereinafter Rules of Practice) applicable to this proceeding (7 C.F.R. § 1.138).

Findings of Fact

1. Respondent is a corporation organized and existing under the laws of the State of New York. Its mailing address was 8033 State Route 104, Oswego, New York, 13126-5624. Respondent ceased business operations on or about August 10, 2010.

2. At all times material herein, Respondent was licensed under the provisions of the PACA (7 U.S.C. § 499a et seq.). PACA license number 2006 0612 was issued to Respondent on March 28, 2006. The license was suspended on July 15, 2010, for failure to pay a reparation award pursuant to section 7(d) of the PACA (7 U.S.C. § 499g(d)). The license terminated on March 28, 2011, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

Conclusions

Respondent's failure to make full payment promptly to 13 sellers of the agreed purchase prices of the perishable agricultural commodities described in Finding of Fact paragraph 3 above constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

Respondent has engaged in willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)). The facts and circumstances of these violations shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)). Respondent waives any further proceeding in this matter. This order shall become final upon issuance. Copies of this order shall be served upon the parties.


for Charles W. Farrow
Associate Deputy Administrator
Fruit and Vegetable Programs
Agricultural Marketing Service

3/1/2012
Date Signed


Shelton S. Smallwood
Attorney for Complainant

2/14/12
Date Signed


Samuel Zappala
For Respondent

2/6/12
Date Signed

Done at Washington, D.C.

this 2nd day of March, 2012


Administrative Law Judge