

UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20250  
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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) PACA Docket No. D-12-0621  
 )  
Pellegrino's Fruit & Produce, Inc., )  
 )  
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.) (PACA) instituted by a Complaint filed by the Associate Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, against Pellegrino's Fruit & Produce, Inc. (Respondent).

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 5 sellers of the agreed purchase prices, or the balances thereof, in the total amount of \$261,196.83 for 42 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 April 13, 2010, through April 6, 2011. The Complaint was served on Respondent.

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 was a corporation organized and existing under the laws of the state of Florida. Its business and mailing address was a home address and was not provided in the Complaint in order to protect personally identifiable information.
2. Respondent is out of business. Service may be made on Joseph M. Pellegrino, the sole principal and 100% shareholder of Respondent. In order to protect the privacy of Mr. Pellegrino, his address will not be listed in this Consent Decision and Order, but will be provided separately to the Hearing Clerk's Office for service purposes.
3. At all times material herein, Respondent was licensed, or operating subject to license, under the provisions of the PACA. License No. 2011 0094 was issued to Respondent on November 5, 2010. The license terminated on November 5, 2011, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual fee.
4. The Secretary has jurisdiction over the Respondent and the subject matter herein.
5. Respondent, during the period April 13, 2010, through April 6, 2011, on or about the dates and in the transactions set forth in Appendix A and incorporated herein by reference, failed to make full payment promptly to 5 sellers of the agreed purchase prices, or balances

thereof, in the total amount of \$261,196.83 for 42 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce.

6. On June 12, 2011, Respondent filed a Voluntary Petition pursuant to Chapter 7 of the Bankruptcy Code (11 U.S.C. § 701 et seq.) in the United States Bankruptcy Court for the Southern District of Florida. The petition was designated Case No. 11-26277. The bankruptcy schedules listed total assets of \$116,741.87 and total liabilities of \$267,186.46, including approximately \$216,513.27<sup>1</sup> in produce debt. The bankruptcy trustee filed a “Report of No Distribution” on December 7, 2011, and the case was terminated on January 24, 2012, without payment to the creditors.

### Conclusions

Respondent’s failure to make full payment promptly to 5 sellers of the agreed purchase prices of the perishable agricultural commodities described in Finding of Fact paragraph 5 above constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Respondent having admitted the jurisdictional allegations in the Complaint, and the

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<sup>1</sup> The amount of the claims listed on the Schedule F for four of the five sellers is less than the amount listed in Appendix A to the Complaint. The total amount listed on the Schedule F for sellers listed in Appendix A is \$196,522.60. The Schedule F was attached to the Complaint as Attachment A.

parties having agreed to the entry of this Consent Decision and Order, the following Order is issued.

Order

Respondent is found to have 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 the violations shall be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

This Order shall become final upon issuance.

Copies of this Order shall be served upon the parties.

[Redacted]

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

11/6/12  
Date Signed

[Redacted]

Shelton S. Smallwood  
Attorney for Complainant

11/1/12  
Date Signed

[Redacted]

Joseph M. Pellegrino  
Representative for Respondent

10/23/12  
Date Signed

Done at Washington, D.C.

this 7<sup>th</sup> day of Nov, 2012

[Redacted]

Administrative Law Judge

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PS Form 3800, June 2002

See Reverse for Instructions