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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	PACA Docket No. D-13-0049
)	
Top Tomato Company,)	
)	Decision Without Hearing
Respondent)	by Reason of Consent

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agriculture Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.)(PACA), instituted by a Complaint filed on October 23, 2012, by the Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleged that during the period January 31, 2010 through January 27, 2012, Top Tomato Company (Respondent) failed to make full payment promptly of the agreed purchase price for 36 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate and foreign commerce from 11 sellers, in the total amount of \$331,446.65.

The Complaint requested that the Administrative Law Judge find that Respondent has willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (& U.S.C. § 499b(4)), and order the facts and circumstances of these violations published.

Respondent and Complainant have now agreed to the entry of a Decision Without Hearing by Reason of Consent as to these allegations as set forth herein. Therefore, this Decision Without Hearing by Reason of Consent 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.) (Rules of Practice).

Findings of Fact

1. Top Tomato Company (Respondent) is a corporation organized and existing under the laws of the State of Florida. The business address for Respondent was 290 S.W. 14th Avenue, Pompano Beach, Florida 33069-3232, and its mailing address was P.O. Box 667617, Pompano Beach, Florida 33066-7617. Respondent is now out of business.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License No. 2001 0463 was issued to Respondent on February 2, 2001. This license terminated on February 2, 2012, 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. The Secretary has jurisdiction over Respondent and the subject matter involved herein.

4. Respondent, during the period January 31, 2010, through January 27, 2012, failed to make full payment promptly to 11 sellers of the agreed purchase prices, or balances thereof, for 36 lots of perishable agricultural commodities which Respondent purchased in the course of interstate and foreign commerce, in the total amount of \$331,446.65.

Conclusions

Respondent admits the jurisdictional allegations in paragraph II of the Complaint and specifically admits that the Secretary has jurisdiction in this matter. Respondent waives oral hearing and further procedure, and consents to the entry of the following order.

Order

Respondent has committed willful, flagrant and repeated violations of section 2(4) of the Act (7 U.S.C. 499b(4)), and the facts and circumstances of the violations shall be published.

This Order shall become final upon issuance.

Copies of this Order shall be served upon the parties.

For Respondent

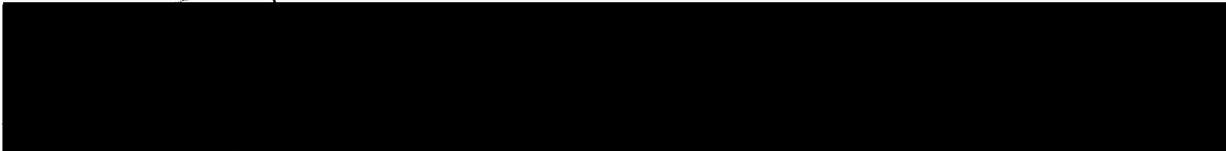


Jeffery G. Pfaff

For Complainant



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



Robert Goldman, Esq.
Attorney for Respondent

Charles L. Kendall, Esq.
Attorney for Complainant

Done at Washington, D.C.

this 8th of November, 2012



Administrative Law Judge

October 19, 2012

U.S.D.A.
PACA

In Re: Top Tomato Company; PACA Docket No. D-12-

13-0049 RSG

To Whom It May Concern:

I stipulate that I was responsibly connected to Top Tomato Company at the time it committed the repeated and flagrant violations which are the subject of the Decision Without Hearing by Reason of Consent in the above matter.

Sincerely,

A large black rectangular redaction box covering the signature area.

Jeffrey Pfaff