

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0565

In re: Delta Fresh Fruit, Inc.

Respondent

Default Decision and Order

Preliminary Statement

This is a disciplinary proceeding brought pursuant to the provisions of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (PACA), the Regulations promulgated pursuant to the PACA (7 C.F.R. §§ 46.1 through 46.45), and the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By the Secretary (7 C.F.R. §§ 1.130 through 1.151).

Complainant, Fruit and Vegetable Program, Agricultural Marketing Service, initiated this proceeding against Delta Fresh Fruit, Inc. (Respondent) by filing a disciplinary Complaint on August 1, 2012, alleging that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to 7 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$338,659.25 for 49 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of or in contemplation of interstate and foreign commerce. The Complaint alleges the violations occurred in commerce between August 4, 2010, and February 13, 2011 on or about the dates and in the transactions set forth in Appendix A to the Complaint, incorporated herein by reference, requests that the Administrative Law Judge find that Respondent committed willful, flagrant, and

repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and that an Order be entered that the facts and circumstances of those violations be published.

Respondent was served with a copy of the Complaint the Rules of Practice on September 17, 2012 by certified mail, but failed to answer the Complaint. The time for filing an answer having expired and upon the motion of Complainant for the issuance of a Decision without Hearing by Reason of Default, the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 (7 C.F.R. § 1.139) of the Rules of Practice.

Findings of Fact

1. Respondent was a corporation organized and existing under the laws of the State of California. Its business and mailing address was in Vernon, California.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. License No. 2004-0549 was issued to Respondent on March 15, 2004. The license was suspended on May 27, 2011, for failure to pay reparation awards, pursuant to 7 U.S.C. § 499g(d) of the PACA and was terminated on March 15, 2012, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)) when Respondent failed to submit the required annual renewal fee.
3. Respondent, during the period of August 4, 2010, through February 13, 2011, on or about the dates and in the transactions set forth in Appendix A to the Complaint and incorporated herein by reference, failed to make full payment promptly to 7 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$338,659.25, for 49 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce.
4. On July 5, 2011, Respondent filed a Voluntary Petition under Chapter 7 of the

Bankruptcy Code (11 U.S.C. § 701 et seq.) in the Central District of California Bankruptcy Court. The petition was designated Case No. 11-38776.

5. Respondent admits in its Schedule F of the said Petition that 6 of the 7 sellers listed in Appendix A to the Complaint hold unsecured claims for unpaid produce debt totaling \$323,876.75¹.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent committed willful, flagrant and repeated violations of section 2(4) of the Act (7 U.S.C. § 499b(4)).

Order

1. The facts and circumstances of the violations shall be published.
2. Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceeding 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 and 1.145).

Copies of this Decision and Order shall be served upon the parties.

January 3, 2013

Peter M. Davenport
Chief Administrative Law Judge

¹ The amount of the claims listed on the Schedule F for two of the six sellers is less than the amount listed in Appendix A to the Complaint.