

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA Docket No. D-13-0112
)
Avocado Importers International, Inc.)
d/b/a Ultimate Avocado)
)
Respondent) Decision Without Hearing
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 December 6, 2012, by the Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleged that during the period December 24, 2007, through October 29, 2009, Avocado Importers International, Inc., (Respondent) failed to make full payment promptly of the agreed purchase price for 35 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate and foreign commerce from five (5) sellers, in the total amount of \$813,573.85.

The Complaint requested that the Administrative Law Judge find that Respondent has willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 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. Avocado Importers International, Inc., d/b/a Ultimate Avocado (Respondent), was a corporation organized and existing under the laws of the state of Texas. Its business address was 1400 W. Military Highway, McAllen, Texas, 78503, and its mailing address was 4000 W. Military Highway, McAllen, Texas, 78503. Respondent ceased business operations in December 2009.

2. As Respondent is not currently operating, the home address of its president, director, and sole shareholder will be provided to the Hearing Clerk for purposes of service under separate cover, to protect personally identifiable information.

3. At all times material herein, Respondent was licensed under the provisions of the PACA. At all times material herein, Respondent was licensed, or operating subject to license, under the provisions of the PACA. License No. 2010 0305 was issued to Respondent on December 8, 2009. The license terminated on December 8, 2010, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

4. The Secretary has jurisdiction over Respondent and the subject matter involved herein.

5. Respondent, during the period December 24, 2007, through October 29, 2009, failed to make full payment promptly to five (5) sellers of the agreed purchase prices, or balances thereof, for 35 lots of perishable agricultural commodities which Respondent purchased in the course of interstate and foreign commerce, in the total amount of \$813,573.85.

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



Jay Humphreys
President and Director

For Complainant



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



Charles L. Kendall, Esq.
Attorney for Complainant

Done at Washington, D.C.

this 1st of February, 2013



Administrative Law Judge

3 JANICE BULLARD
for CHIEF ALJ PETER DAVENPORT