

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re: )  
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Lion Heart Group, Inc., )  
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)  
)  
Respondent )

PACA Docket No. D-05-0024

DECISION WITHOUT HEARING BY REASON OF CONSENT

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.; hereinafter "PACA"). Complainant filed a complaint alleging that Respondent, during the period November 2004 through May 2005, willfully, flagrantly and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to 6 sellers of the agreed purchase prices in the total amount of \$874,638.10 for 112 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate and foreign commerce. The complaint further alleged that Respondent, during the period of January 2003 through January 2004, while acting as a grower's agent: 1) made, for a fraudulent purpose, false and misleading statements in connection with transactions involving perishable agricultural commodities received in interstate and foreign commerce; and 2) failed to account truly and correctly and make full payment promptly to a grower of the net proceeds for peppers which Respondent received, accepted, and sold on the grower's behalf in interstate or foreign commerce. Respondent sold the peppers to buyers in 96 transactions while under-reporting the sales price to the grower by \$16,803.32. The complaint requested that the Administrative Law Judge issue a finding that Respondent willfully, flagrantly and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order that the PACA license of

Respondent be revoked.

The parties have now agreed to the entry of a Decision Without Hearing by Reason of Consent 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.; hereinafter "Rules of Practice") applicable to this proceeding (7 C.F.R. §1.138).

#### Findings of Fact

1. Lion Heart Group, Inc., (hereinafter "Respondent") is a corporation organized and existing under the laws of the state of Florida. Its business address is 1106 S. Powerline Road, Suite 102, Pompano Beach, Florida 33069-4310. Its mailing address is P.O. Box 667230, Pompano Beach, Florida 33066-7230.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 19980030 was issued to Respondent on October 7, 1997. This license has been renewed annually and is next subject to renewal on October 7, 2006. At all times material herein, Respondent was licensed or operating subject to license under the PACA.

3. Respondent, during the period November 2004 through May 2005, failed to make full payment promptly to 6 sellers of the agreed purchase prices in the total amount of \$874,638.10 for 112 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate and foreign commerce. At the time of the entry of this decision, each of the 6 sellers have been paid.

4. Respondent neither admits nor denies that, during the period of January 2003

through January 2004 while acting as a grower's agent, made, for a fraudulent purpose, false and misleading statements in connection with transactions involving perishable agricultural commodities by failing to account truly and correctly and make full payment promptly to a grower of the net proceeds for peppers which Respondent received, accepted, and sold on the grower's behalf in interstate or foreign commerce, and that Respondent sold the peppers to buyers in 96 transactions while under-reporting the sales price to the grower by \$16,803.32. While Respondent neither admits nor denies the allegations, Respondent has agreed to pay the grower the \$16,803.32 alleged to have been under-reported.

#### Conclusion

1. Respondent's failure to make full payment promptly to 6 sellers of the agreed purchase prices of the perishable agricultural commodities described in Finding of Fact 3 above constitutes willful, flagrant and repeated violations of Section 2(4) of the PACA (7 U.S.C. § 499b(4)).

2. Respondent's failure to account truly and correctly and make full payment promptly to a grower of the net proceeds for peppers which Respondent received, accepted, and sold on the grower's behalf in interstate or foreign commerce, described in Finding of Fact 4 above constitutes willful, flagrant and repeated violations of Section 2(4) of the PACA (7 U.S.C. § 499b(4)).

#### Order

Respondent willfully, flagrantly, and repeatedly violated Section 2(4) of the PACA. Respondent's PACA license is revoked. However, that revocation shall be held in abeyance in accordance with the terms of the Understanding Regarding the Consent Decision (hereinafter

“Understanding”) entered into between Complainant and Respondent, and any supplemental understandings regarding the consent that may be entered by the parties. If the Respondent fails to satisfy the terms of the Understanding, or any supplemental understandings entered by the parties, the revocation of Respondent’s PACA license will automatically take effect without further procedure, upon application of Complainant to the Administrative Law Judge. Respondent explicitly waives all further proceedings in this disciplinary proceeding under the Perishable Agricultural Commodities Act. The Administrative Law Judge will retain jurisdiction over this case pending any final motions by the parties.

This order shall become final upon issuance. Copies of this order shall be served upon the parties.

Done at Washington, D.C.

this 8<sup>th</sup> day of February, 2006

  
Administrative Law Judge  
PETER M. DAVENPORT

2/3/06  
Date signed

1/27/06  
Date Signed

1/30/06  
Date Signed

1/31/06  
Date Signed

  
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