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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	PACA Docket No. D-15-0101
	)	
Florida Fresh Tropicals, LLC ,	)	
	)	
	)	
	)	
Respondent	)	Decision Without Hearing By Reason of Default
	)	

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.)(the Act or PACA), instituted by a Complaint filed by the Associate Deputy Administrator, Fruit and Vegetable Program (now Specialty Crops Program), Agriculture Marketing Service (Complainant) on April 23, 2015, by the Associate Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA).

The Complaint filed by Complainant alleges that Respondent, during the period August 2013 through August 2014, failed to make full payment promptly to seven (7) sellers of the agreed purchase prices in the total amount of $392,127.15 for 58 lots of perishable agricultural commodities, as listed in Appendix A to the Complaint and incorporated therein by reference, which Respondent purchased, received, and accepted in interstate and foreign commerce.

The Complaint alleges that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)), and that the failure of Respondent to make full payment promptly, as more fully described in section 46.2(aa) of the Regulations (7 C.F.R. § 46.2 (aa)), of the agreed purchase prices for perishable agricultural commodities that it purchased, received and accepted

in interstate and foreign commerce, constitutes willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

The Complaint requests that pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)), 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 that the facts and circumstances of the violation be published.

At the time of the filing of the Complaint, Complainant provided to the Hearing Clerk's Office a service memorandum containing the last known addresses of Respondent as indicated in the Agricultural Marketing Service, PACA Division (AMS) license file. Service of the Complaint was attempted by the Hearing Clerk's Office by certified mail to those addresses; however, after some length, the envelopes and return receipt cards sent to both addresses were returned as "Return to Sender, Unable to Forward". At the request of the Hearing Clerk's Office and of Administrative Law Judge Bullard, the AMS began a search for "better" addresses of Respondent, to no avail. Thereafter, on February 17, 2016, *sua sponte*, Respondent's 100 percent owner, Jesse Fernandez, contacted the AMS via email on behalf of Respondent. On that same date, Complainant served Mr. Fernandez with a copy of the Complaint by "R-post" email, which showed the time and date Mr. Fernandez received the email. Further, Mr. Fernandez replied via email confirming receipt of the email and attached Complaint.

In the February 17, 2016 email, Complainant requested that Mr. Fernandez provide a physical address to the Hearing Clerk for future mailings. (See Attachment 2). Complainant also called Mr. Fernandez at the number provided in his emails; however, there was no answer, and

the voice-mailbox was full. On May 11, 2016, the AMS served Mr. Fernandez by "R-post" email with the Complaint a second time, and included the April 7 Order to Show Cause filed by Administrative Law Judge Janice Bullard in this case. The "R-post" email shows the time and date Mr. Fernandez received the email.

On May 19, 2016, a representative of AMS attempted personal service of the Complaint[1] and the subsequent April 7, 2016 Order to Show Cause on Respondent at the last known addresses of Respondent as indicated in the AMS license file. While attempting service on those addresses, the AMS representative also made efforts to ascertain a different address in the area where Respondent or its principal might be located. Despite those efforts, neither Respondent nor its 100 percent owner, Jesse Fernandez, could be located. On May 26, 2016, Jesse Fernandez sent an email to Complainant's counsel acknowledging receipt of both the Complaint and the Notice to Show Cause, and Complainant's counsel responded by stating that Respondent needed to, *inter alia*, file an Answer to the Complaint; Complainant included an explanation to Respondent as to how that could be done. Complainant also reiterated that Respondent needed to provide a physical address and contact information to the Hearing Clerk's Office

Based on the foregoing, the Complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By The Secretary (7 C.F.R. § 1.130 *et seq.*) (Rules of Practice), and the April 7, 2016 Order to Show Cause, were served on Respondent. Respondent failed to file an Answer.

[1] The AMS was conducting other AMS business in the area, hence believed a personal service attempt on Respondent should be made, even though Respondent had already been served electronically by "R-post" method.

Respondent was duly served with the Complaint pursuant to section 1.147 (c) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By The Secretary (7 C.F.R. § 1.130 *et seq.*) (Rules of Practice), and Respondent did not file an answer to the Complaint within the time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136). Therefore, the following Decision and Order is issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent was a limited liability company existing under the laws of the state of Florida. Respondent's business and mailing address was 1620 N.W. 21st Street, Unit B, Miami, Florida 33142.

2. At all times material herein, Respondent was licensed or operating subject to the provisions of the PACA. License number 20140047 was issued to Respondent on October 8 2013. The license terminated on October 8, 2014, 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. Respondent, during the period August 2013 through August 2014, on or about the dates and in the transactions set forth in Appendix A to the Complaint, failed to make full payment promptly to seven (7) sellers for 58 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of $392,127.15.

Conclusions

Respondent's failure to make full payment promptly, as more fully described in section 46.2(aa) of the Regulations (7 C.F.R. § 46.2(aa)), of the agreed purchase prices for perishable agricultural commodities that it purchased, received and accepted in interstate and foreign commerce, constitutes willful, flagrant and repeated violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

The facts and circumstances of Respondent's violation shall be published.

This Order shall take effect on the day that this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 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 hereof shall be served upon parties.

Done at Washington, D.C.

this 9th day of August, 2016

[redacted]

Bobbie J. McCartney
Chief Administrative Law Judge