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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. D-15-0166 PACA

In re:

CHIEFTAIN HARVESTING, INC.,

Respondent.

DECISION WITHOUT HEARING BY REASON OF DEFAULT

I. 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 on August 10, 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 March 2012 through September 2012, failed to make full payment promptly to four (4) sellers of the agreed purchase prices in the total amount of $1,465,307.42 for 510 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in interstate and foreign commerce.

The Complaint states 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 that the facts and circumstances of the violation be published.

II. PROCEDURAL HISTORY

On August 10, 2015, PACA filed a complaint against Respondent, alleging violations of the Act. The Hearing Clerk for the Office of Administrative Law Judges (OALJ) sent the complaint by certified mail to Respondent and Respondent's counsel of record. United States Postal Service records reflect that the complaint was received on August 17, 2015 by Respondent's counsel of record, and was received on August 19, 2015 by one of Respondent's fifty percent owners. No answer was filed by Respondent. By Order issued September 29, 2015, I directed Respondent to show cause why a Decision and Order on default should not be entered. Respondent did not submit a statement pursuant to that Order.

On December 23, 2015, Complainant filed a response to my Order. On February 12, 2016, Complainant filed a motion for entry of default. The motion was sent to Respondents on February 12, 2016 by certified mail upon Respondent and its principals. Certified return receipts were received by the Hearing Clerk on March 30, 2016. Tracking of the certified mail reflect that the Respondent and its principals acknowledged receipt of Complainant's motion on February 16, 2016. Respondent did not file a response to Complainant's motion and there is no indication that Respondent did not receive a copy of the complaint.

III. AUTHORITIES

Pursuant to the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By The Secretary (7 C.F.R. § 1.130 et seq.)(the Rules of Practice), a respondent is required to file an Answer within twenty (20) days after service of a Complaint. 7 C.F.R. § 1.136(a). The Rules of Practice also provide that an Answer "shall . . . [c]learly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense

asserted by the respondent." 7 C.F.R. § 1.136(b)(1). The failure to timely file an Answer or failure to deny or otherwise respond to an allegation proffered in the Complaint shall be deemed an admission of all the material allegations in the Complaint; in such situation, default shall be appropriate. 7 C.F.R. § 1.136(c).

Pursuant to the Rules of Practice, when computing the time permitted for a party to file a document or other paper, Saturdays, Sundays, and Federal holidays are to be included except when the time expires on one of those days; should such situation occur, the time period shall be extended to include the next business day. 7 C.F.R. § 1.147(h). The Rules of Practice also state that a document sent by the Hearing Clerk "shall be deemed to be received by any party to a proceeding . . . on the date of delivery by certified or registered mail. . ." 7 C.F.R. § 1.147(c)(1).

The Rules of Practice further provide that "[t]he failure to file an answer … shall constitute a waiver of the hearing. Upon such. . . failure to file, complainant shall file a proposed decision and motion for default…Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto." 7 C.F.R. § 1.139.

IV. DISCUSSION

The record establishes that Respondent and its principals were served with the complaint pursuant to section 1.147 (c)(1) of the Rules of Practice, and Respondent failed to file an answer within the 20 day time period prescribed by the Rules of Practice. Respondent through its principals acknowledged receipt of the motion for decision by reason of default and failed to file an objection pursuant to the Rules. Therefore, the instant Decision and Order by reason of default is appropriate pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

V. FINDINGS OF FACT

1. Respondent is a corporation existing under the laws of the state of California, with a business address in Salinas, California 93901 and a mailing address at a P.O. Box in Salinas, California 93912.

2. At all times material herein, Respondent was licensed or operating subject to the provisions of the PACA. License number 20081000 was issued to Respondent on June 9, 2008. The license terminated on June 9, 2013, 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. On May 15, 2015 a Stipulation For Entry Of Judgment And Order Thereon (Judgment) was issued in United States District Court, Northern District of California , wherein it was stipulated and ordered that Respondent owed substantial sums of past-due produce debt to two of the four creditors listed in Appendix A to the Complaint. Judgment was entered in favor of the creditor MKM Farms, Inc. against Respondent in the amount of $575,300.22, and in favor of the creditor Field Fresh Farms, LLC against Respondent in the amount of $276,138.58, for "Enforcement of [the] PACA". (See Appendix B to the Complaint).

VI. CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.

2. Respondent failed to file an answer to the instant cause of action, and accordingly, default judgment is appropriate.

3. During the period March 2012 through September 2012, Respondent failed to make full payment promptly of the agreed purchase prices, or balances thereof, for 510 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce from four (4) sellers, in the total amount of $1,465,307.42 in willful violation of PACA.

ORDER

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 violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)). The facts and circumstances of Respondent's PACA 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).

The Hearing Clerk shall sent copies of this Order to all parties.

So ORDERED this 12th day of April, 2016, in Washington, D.C.

[redacted]

Janice K. Bullard
Administrative Law Judge