

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:

Hugo N. Iraheta, d/b/a  
Hugo Produce Company and as  
Hugo Iraheta Produce Company;

Respondent

PACA Docket No. D-04-0011

Decision Without Hearing  
By Reason of Default

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*, hereinafter referred to as “PACA” or the “Act”), instituted by a complaint filed on April 27, 2004 by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture.

The complaint alleges that during the period of January through May 2002, Hugo N. Iraheta, doing business as Hugo Produce Company, and also doing business as Hugo Iraheta Produce Company (hereinafter “Respondent”), failed to make full payment promptly to 15 sellers of the agreed purchase prices in the amount of \$322,394.59 for 78 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate commerce.

A copy of the complaint, filed April on 27, 2004, was sent to Respondent at 800 McGarry Street, # 6, Los Angeles, California 90021-1951 by certified mail on April 27, 2004. The complaint was returned to the Hearing Clerk’s office “undelivered” on May 11, 2004. The complaint was then mailed to Respondent via regular mail to this address on May 14, 2004.

A copy of the complaint was sent to Respondent at 2900 Sunset Place, Apt. 323, Los Angeles, California 90005 by certified mail on May 14, 2004. Respondent had listed this address as his address in Respondent’s Bankruptcy filing 0228581 in United States Bankruptcy

Court for the Central District of California. The complaint mailed to this address was returned “undelivered” June 30, 2004. The complaint was then mailed to Respondent via regular mail to this address on July 2, 2004.

By operation of the rule 1.147(c)(1) of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §1.147(c)(1)), after the complaint was returned as unclaimed or refused by certified mail, it was deemed received by Respondent when the complaint was mailed again by regular mail on May 11, 2004. Respondent was deemed to have received the complaint at its last known address that Respondent had provided USDA. The USDA made a second attempt to provide Respondent with the complaint at an address that Respondent had listed as his address during Respondent’s bankruptcy proceedings.

No answer to the complaint has been received. The time for filing an answer having expired, and upon motion of the Complainant for the issuance of a default decision, the following Decision and Order shall be issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

#### Findings of Fact

1. Hugo N. Iraheta, doing business as Hugo Produce Company and also doing business as Hugo Iraheta Produce Company, is an individual whose principal place of business is in the State of California. Respondent reported to the USDA that his business mailing address is 800 McGarry Street, # 6, Los Angeles, California 90021-1951. Respondent’s Bankruptcy filing 0228581 in United States Bankruptcy Court for the Central District of California indicates Respondent’s address as 2900 Sunset Place, Apt. 323, Los Angeles, California 90005.

2. At all times material to the allegations of the complaint, Respondent was licensed under the provisions of PACA. License number 011258 was issued to Respondent on July 12, 2001. This license terminated on July 12, 2002, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d (a)), when Respondent failed to pay the annual fee.

3. Respondent, during the period of January through May 2002, failed to make full payment promptly to 15 sellers of the agreed purchase prices in the amount of \$322,394.59 for 78 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate commerce.

4. On June 27, 2002, Respondent filed a Voluntary Petition pursuant to Chapter 7 of the U.S. Bankruptcy Code (11 U.S.C. §701 *et. seq.*) in the United States Bankruptcy Court, Central District of California, docket number 0228581. Respondent filed for bankruptcy protection for himself individually, and also for his sole proprietorship companies Hugo Produce and Hugo Iraheta Produce Company. Respondent admits in bankruptcy schedule F that all 15 sellers also listed in paragraph III of the complaint held unsecured debts. In his bankruptcy petition, Respondent admits that all 15 fifteen creditors are owed the amount listed in paragraph III, or more, for produce debt incurred in 2002, for a total of \$376,000. The Bankruptcy Court discharged Respondent's debts on October 7, 2002.

#### Conclusions

Respondent's failure to make full payment promptly with respect to the 78 lots of perishable agricultural commodities set forth in Finding of Fact No. 3 above, constitutes wilful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), for which the order below is issued.

#### Order

A finding is made that Respondent has committed wilful, flagrant and repeated violations of section 2 of the Act (7 U.S.C. § 499b(4)), and the facts and circumstances of the violations shall be published.

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

Pursuant to the Rules of Practice, this Decision will become final without further proceedings thirty-five days after service hereof unless appealed to the Secretary by a party to the proceeding within thirty days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139, 1.145).

Issued at Washington, D.C.

This \_\_\_\_ Day of \_\_\_\_\_

3/31/05

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Peter M. Davenport  
Administrative Law Judge