

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	PACA Docket No. D-05-0004
	)	
Silver Creek, Inc., also doing business	)	
as Quality Produce,	)	
	)	Decision Without Hearing by Reason
Respondent	)	of Default

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (hereinafter, "PACA"), instituted by a complaint filed on January 19, 2005, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The complaint alleged that Respondent, during the period April 2002 through July 2004, failed to make full payment promptly to 17 sellers of the agreed purchase prices in the total amount of \$752,378.73 for 232 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate commerce, in willful, flagrant and repeated violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)). The complaint requested that the Administrative Law Judge issue a finding that Respondent willfully, flagrantly and repeatedly violated section 2(4) of the PACA, and order publication of the facts and circumstances of the violations.

The complaint was mailed, by certified mail, to Respondent's business mailing address of at 107 ½ East 44<sup>th</sup> Street, Boise, Idaho 83714-4820. The complaint was received and accepted on January 27, 2005. According to section 1.136(a) of the Rules of Practice Governing Formal Adjudicatory Procedures Instituted by the Secretary Covering Various Statutes (7 C.F.R. § 1.136(a)) (hereinafter, "Rules of Practice"), an answer is due within 20 days after service of the complaint. As Respondent has failed to file an answer to the complaint within the time allowed

for that purpose, Respondent is in default, pursuant to section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)).

Upon motion of the Complainant for the issuance of a Decision Without Hearing by Reason of Default, the following Decision and Order is 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. Silver Creek, Inc., also doing business as Quality Produce (hereinafter "Respondent"), is a corporation organized and existing under the laws of the State of Idaho. Its business mailing address is 107 2 East 44<sup>th</sup> Street, Boise, Idaho 83714-4820.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 2002-1581 was issued to Respondent on August 28, 2002. This license is next subject for renewal on August 28, 2005, but was suspended on May 20, 2004, pursuant to section 8(d) of the PACA (7 U.S.C. ' 499h(d)) when Respondent failed to satisfy a reparation order.

3. As more fully set forth in paragraph III of the complaint, Respondent, during the period April 2002 through July 2004, failed to make full payment promptly to 17 sellers of the agreed purchase prices in the total amount of \$752,378.73 for 232 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate commerce.

#### Conclusions

Respondent=s failure to make full payment promptly with respect to the transactions referred to 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)), for which the Order below is issued.

Order

A finding is made that Respondent has committed willful, repeated and flagrant violations of section 2(4) of the Perishable Agricultural Commodities 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 11th day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the PACA, 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 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).

Copies hereof shall be served upon the parties.

Done at Washington, D.C.

this 27<sup>th</sup> day of May, 2005

Peter M. Davenport  
Administrative Law Judge