

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-04-0018
)	
Do Ripe Farms, Inc.,)	
)	
)	
Respondent)	<u>Decision Without Hearing</u>
)	<u>By Reason of Default</u>

Preliminary Statement

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 the "Act", instituted by a complaint filed on July 9, 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 September 2002 through April 2003, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 16 sellers, 100 lots of perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$1,040,164.80.

A copy of the complaint was served upon Respondent by certified mail on July 20, 2004. In a July 28, 2004 letter to the Hearing Clerk, Respondent acknowledged that it was served with the complaint on July 20, 2004. In the letter, Respondent requested an extension of 60 days (until October 20, 2004) to file its answer. Respondent never filed an answer with the Hearing Clerk, as required by the Rules of Practice, nor did anyone file a notice of appearance on behalf of Respondent. Rather, a document captioned as an answer was mailed to counsel for Complainant on November 24, 2004, more than a full month after the extended deadline.

Moreover, no reason for submitting the late answer, or for not filing it with the Hearing Clerk, was ever submitted. Nor was any response filed by Respondent to the Motion for Decision Without Hearing by Reason of Default ever received, even though Robert Hoch, the President of Do Ripe, signed the certified mail receipt on February 10, 2005. As an answer was never received by the Hearing Clerk, and the answer served on Complainant was received over thirty days after the extended deadline of October 20, 2004, and in the absence of any good cause showing by Respondent. I am granting the motion of the Complainant for the issuance of a Default Order. 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. Respondent is a corporation organized and existing under the laws of the state of Georgia. Its business mailing address is 721 Hosannah Road, Locust Grove, Georgia, 30248.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. Pursuant to the licensing provisions of the Act, license number 2000-0951 was issued to Respondent on March 24, 2000. This license terminated on March 24, 2002, pursuant to Section 4(a) of the Act (7 U.S.C. § 499d(a)) when Respondent failed to pay its required annual renewal fee.
3. As more fully set forth in paragraph III of the complaint, during the period September 2002 through April 2003, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 16 sellers, 100 lots of perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of

\$1,040,164.80.

Conclusions

Respondent's failure to make full payment promptly with respect to the 100 transactions set forth in Finding of Fact No. 3, above, constitutes willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)), for which the Order below is issued.

Order

A finding is made that Respondent has committed willful, 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 11th day after 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 10th day of August, 2005

MARC R. HILLSON
Chief Administrative Law Judge