

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

PACA Docket No. D-08-0161

In re: RLB GROWERS AND SHIPPERS, LLC

Respondent

DEFAULT DECISION AND ORDER

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 August 1, 2008, by the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (hereinafter “Complainant”). The Complaint alleges that during the period July 5, 2006, through September 29, 2007, Respondent RLB Growers and Shippers, LLC, failed to make full payment promptly to 23 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$419,977.10 for 46 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of or in contemplation of interstate and foreign commerce.

A copy of the Complaint was sent to Respondent’s principal, Roger L. Burden, by certified mail on August 1, 2008, and it was returned to the Hearing Clerk on September 2, 2008, as “unclaimed.” Accordingly, pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151; hereinafter “Rules of Practice”), on September 3, 2008, the Hearing Clerk re-mailed the

Complaint using regular mail. That mailing by regular mail is deemed to constitute service on Respondent pursuant to section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)). Respondent has not answered the Complaint. The time for filing an answer having run, and upon the motion of 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. RLB Growers and Shippers, LLC (hereinafter “Respondent”), is a limited liability company organized and existing under the laws of the State of Indiana. Its business and mailing address was 9951 Hedden Road, Evansville, Indiana 47725. Respondent ceased business operations in August 2007. Respondent’s current mailing address is c/o Roger L. Burden, 2736 Sugar Cane Lane, Evansville, Indiana 47715.
2. At all times material to this decision, Respondent was licensed under the provisions of the PACA. License number 2007-0201 was issued to Respondent on November 24, 2006. This license was suspended on November 1, 2007, pursuant to section 7(d) of the PACA (7 U.S.C. § 499g(d)), when Respondent failed to pay a reparation award. The license terminated on November 24, 2007, 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 July 5, 2006, through September 29, 2007, failed to make full payment promptly to 23 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$419,977.10 for 46 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of or in contemplation of interstate and foreign commerce.

4. On August 20, 2007, a civil complaint was filed against Respondent in the United States District Court, Southern District of Indiana to enforce the trust provisions of the PACA (7 U.S.C. § 499e(c)). The civil complaint was designated case number 3:07-cv-00110-RLY-WGH. On January 15, 2008, an Order and Judgment was issued as to the validity and amount of the PACA claims. The Order and Judgment deemed as valid all the PACA claims of the sellers listed in paragraph III of the Complaint and found that the amounts owed to the sellers were greater than or equal to the amounts alleged in this complaint.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent's failure to make full payment promptly to 23 sellers in the total amount of \$419,977.10 for 46 lots of perishable agricultural commodities, 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

Respondent is found to have committed willful, flagrant, and repeated violations of section 2(4) of the PACA (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 30 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.
December 1, 2008

PETER M. DAVENPORT
Administrative Law Judge