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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 14-0173 (PACA)

In re:

OLD FASHION HONEY, doing business as
U.S. FOOD LOGISTICS,

Respondent.

DECISION AND ORDER ON THE RECORD

The instant matter involves a complaint filed by the United States Department of Agriculture ("Complainant"; "USDA") against Old Fashion Honey, d/b/a U.S. Food Logistics ("Respondent") alleging violations of the Perishable Agricultural Commodities Act, 1930, as amended, 7 U.S.C. §499a et seq. ("PACA"; "the Act"). The complaint alleged that Respondent failed to make full payment promptly in the aggregate amount of alleged that Respondent, during the period November 2013 through February 2014, failed to make full payment promptly of the agreed purchase prices, or balances thereof, for 30 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce from five (5) sellers, in the total amount of $1,239,751.64.

I. PROCEDURAL HISTORY

On August 20, 2014, Complainant filed a Complaint against Respondent alleging violations of the PACA. Respondent filed an Answer with the Hearing Clerk for the Office of Administrative Law Judges ("OALJ") for USDA ("Hearing Clerk") on October 6, 2014, through counsel. Respondent admitted the Secretary's jurisdiction over this matter and generally denied the allegations of violations of the Act.

On December 17, 2014, counsel for Respondent filed a motion to withdraw, which I granted by Order issued January 30, 2015, upon no objection by Complainant. With no further action taken in the case, on January 21, 2016, I directed Respondent to show cause why a Decision and Order on the record should not entered, and set deadlines for the submission of evidence. On February 11, 2016, Complainant responded by filing the affidavit of PACA employee Antonio Velasquez and a brief in support of the entry of a Decision and Order on the record. The affidavit is hereby identified as Complainant's exhibit (CX) 1, and entered into the record.

This Decision and Order is issued on unopposed motion of Complainant, and incorporates all of the pleadings of the parties and all other evidence of record.

II. FINDINGS OF FACT & CONCLUSIONS OF LAW

A. Discussion

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes ("Rules of Practice"), set forth at 7 C.F.R. § 1.130 et seq., apply to the adjudication of the instant matter. The Rules allow for a Decision Without Hearing by Reason of Admissions (7 C.F.R. §1.139). In addition, the Secretary has recognized that "a respondent in an administrative proceeding does not have a right to an oral hearing under all circumstances, and an agency may dispense with a hearing when there is no material issue of fact on which a meaningful hearing can be held." *H. Schnell & Company, Inc.,* 57 Agric. Dec. 1722, 1729 (1998).

Respondent has failed to file evidence, and the general denials in Respondent's answer establish that there is no material issue of fact requiring a hearing. There is no evidence to contradict Complainant's allegations that Respondent's transactions under the Act resulted in an

outstanding balance due to sellers is in excess of $5,000.00, which represents more than a de minimis amount. See, *Fava & Co.*, 46 Agric. Dec. 798, 81 (1984); 44 Agric. Dec. 879 (1985). "[U]nless the amount admittedly owed is de minimis, there is no basis for a hearing merely to determine the precise amount owed". *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (1984); 46 Agric. Dec. 83 (1985). I find that a hearing is not necessary in this matter, as there is no genuine issue of material fact, and because the amount remaining unpaid to growers exceeds $5,000.00.

PACA requires payment by a buyer within ten (10) days after the date on which produce is accepted. 7 C.F.R. § 46.2(aa)(5). The regulations allow the use of different payment terms so long as those terms are reduced to writing prior to entering into the transaction. 7 C.F.R. § 46.2(aa)(11). PACA requires "full payment promptly" for produce purchases and where "respondent admits the material allegations in the complaint and makes no assertion that the respondent has achieved or will achieve full compliance with the PACA within 120 days after the complaint is served on that respondent, or the date of the hearing, whichever occurs first, the [matter] will be treated as a no-pay case." *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 547 - 549 (1998).

In an attachment to its complaint, Complainant identified 30 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in the course of interstate and foreign commerce from five (5) sellers, in the total amount of $1,239,751.64 during the period November 2013 through February 2014, for which Respondent failed to make full payment promptly of the agreed purchase prices. Appendix A to the complaint (Appendix A).

In his declaration signed on February 5, 2016, PACA employee Jose Antonio Velasquez, described the findings of his investigation into Respondent's activities under the Act and concluded that Respondent did not make any payments to the sellers identified in Appendix A. CX-1. Mr. Velasquez found that one of the sellers received partial payment from its insurance company, but no additional payment from Respondent. The General Manager for seller Carsol Fruit Export S.A (Carsol) advised that Respondent owes Carsol $800,000, which includes the $525,941.00 listed as past due and unpaid in Appendix A. Mr. Velasquez could not locate other sellers, but there is no evidence to demonstrate that the unpaid balances were paid by Respondent.

The record further establishes that Respondent did not renew its's PACA license since the complaint was filed, and on September 20, 2014, the PACA Division of the Agricultural Marketing Service terminated Respondent's license, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)). Accordingly, I find that Respondent has not achieved full compliance with the PACA within 120 days after the complaint was served in August 2014.

A violation is repeated whenever there is more than one violation of the Act, and is flagrant whenever the total amount due to sellers exceeds $5,000.00. *D.W. Produce, Inc.*, 53 Agric. Dec. 1672, 1678 (1994). A violation is willful if a person intentionally performs an act prohibited by statute or carelessly disregards the requirements of a statute, irrespective of motive or erroneous advice. Id. at 1678. In the instant matter, Respondent has not provided any evidence to demonstrate that produce growers were paid for purchases it made. Respondent's failure to pay sellers promptly for the purchase of products covered by section 2(4) of the PACA is willful, and the violations are repeated and flagrant. See 7 U.S.C. § 499b(4).

As stated in *Scamcorp*, supra., the appropriate sanction in this case is revocation of Respondent's PACA license. Since Respondent's PACA license was terminated on September 20, 2014, publication in lieu of revocation is the appropriate sanction in the case.

B. Findings of Fact

(1) Respondent is a corporation existing under the laws of the state of Florida.

(2) Respondent's business address is in Delray Beach, Florida 33484.

(3) At all times material herein, Respondent was licensed under and operating subject to the provisions of the PACA. License number 20111421 was issued to Respondent on September 20, 2011.

(3) Respondent's license was terminated by the PACA Division of the Agricultural Marketing Service on September 20, 2014, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.

(4) Respondent, during the period November 2013 through February 2014, on or about the dates and in the transactions set forth in Appendix A to the Complaint in this case, failed to make full payment promptly of the agreed purchase prices, or balances thereof, for 30 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate and foreign commerce from five (5) sellers, in the total amount of $1,239,751.64.

C. Conclusions of Law

(1) The Secretary has jurisdiction in this matter

(2) Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly of the agreed purchase prices, or balances thereof, for the perishable agricultural commodities that it purchased, received, and accepted in

interstate and foreign commerce.

(3) Respondent's repeated violations constitute willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)) and sanctions are appropriate.

ORDER

Respondent committed willful, flagrant and repeated violations of section 2(4) of the PACA. The facts and circumstances of Respondent's violations 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 P ACA, 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 the parties by the Hearing Clerk.

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

[redacted]

Janice K. Bullard
Administrative Law Judge