

1/20/06

FEB 27 2006

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	PACA Docket No. D-04-0026
	)	
Dal-Don Produce Co., Inc.	)	
	)	
Respondent	)	Decision Without Hearing by Reason of Consent

**Preliminary Statement**

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) ("the Act") and the regulations issued thereunder (7 C.F.R. Part 46) ("the Regulations"), instituted by a Complaint filed on September 29, 2004 by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture.

The Complaint alleged that Respondent Dal-Don Produce Co., Inc. (hereinafter "Respondent") failed to make full payment promptly in the total amount of \$46,644.55 to seven (7) sellers for 19 lots of perishable agricultural commodities which it purchased, received, and accepted in or in contemplation of interstate commerce during the period January 15, 2003 through January 30, 2003, and that Respondent, while acting as a growers' agent, failed to remit net proceeds in the total amount of \$511,272.14 to nine (9) growers for 203 lots of watermelons which it received, accepted, and sold in interstate commerce or in contemplation of interstate commerce during the period August 20, 2003 through December 26, 2003.

Complainant requested that the Administrative Law Judge find that Respondent has wilfully, flagrantly and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)), and order that the facts and circumstances of these violations be published.

The parties have now agreed to the entry of a Decision Without Hearing by Reason of Consent as set forth herein. Therefore, this Decision Without Hearing by Reason of Consent is entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*) ("Rules of Practice") applicable to this proceeding (7 C.F.R. §1.138).

#### Findings of Fact

1. Dal-Don Produce Co., Inc. (hereinafter "Respondent") is a corporation organized and existing in the State of Florida. Its business mailing address is P.O. Box 120036, Clermont, FL 34712-0036.
2. At all times material herein, Respondent was licensed under the PACA. License number 19662521 was issued to Respondent on April 22, 1966. This license terminated on April 22, 2004, 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 failed to make full payment promptly in the total amount of \$46,644.55 to seven (7) sellers for 19 lots of perishable agricultural commodities which it purchased, received, and accepted in or in contemplation of interstate commerce during the period January 15, 2003 through January 30, 2003.
4. Respondent, while acting as a growers' agent, failed to remit net proceeds promptly in the total amount of \$511,272.14 to nine (9) growers for 203 lots of watermelons which it received, accepted, and sold in interstate commerce or in contemplation of interstate commerce during the period August 20, 2003 through December 26, 2003.
5. Respondent completed making full payment to the sellers and growers listed in the Complaint on February 3, 2006.

### Conclusion

Respondent's failure to make full payment promptly for perishable agricultural commodities, as set forth in Findings of Fact 3 and 4 above, constitutes wilful, flagrant and repeated violations of section 2(4) of the PACA.

### Order

Respondent is found to have engaged in repeated and flagrant violations of section 2(4) of the PACA; however, that finding and the publication of the facts and circumstances of the violations shall be held in abeyance in accordance with the terms of the Understanding Regarding the Consent Decision (hereinafter "Understanding") entered into between Complainant and Respondent. If Respondent fails to satisfy the terms of the Understanding, the finding and publication will become effective, upon application of Complainant to the Administrative Law Judge, without further procedure. If Respondent satisfies the terms of the Understanding, Complainant shall request that the Administrative Law Judge issue an order terminating the finding and publication held in abeyance as of April 1, 2006.

The Administrative Law Judge shall retain jurisdiction in this matter for the purpose of activating or terminating the finding and publication, currently held in abeyance, upon application of the Complainant as described herein.

This order shall become final upon issuance. Copies of this order shall be served upon the parties.

Done at Washington, D.C.

this 10<sup>th</sup> of Feb, 2006

  
Administrative Law Judge

For Respondent

For Complainant

  
for Dal-Don Produce Co., Inc.

*for*   
Associate Deputy Administrator  
Fruit and Vegetable Programs  
Agricultural Marketing Service

  
Steven P. McCarron, Esq.  
Attorney for Respondent

  
Charles L. Kendall, Esq.  
Attorney for Complainant