

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

CONFIDENTIAL
12/11/12

In re:) PACA Docket No. D- 06-0006
)
John A. Foster, d/b/a)
Fosters Farm Fresh Produce)
)
Respondent)

DECISION WITHOUT HEARING BY REASON OF CONSENT

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.; hereinafter "PACA"). Complainant filed a complaint alleging that ~~Respondent~~ ^{MRM}, during the period February 2003 through July 2003, Respondent willfully, flagrantly and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly to two sellers of the agreed purchase prices in the total amount of \$220,755.41 for 50 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate and foreign commerce. The complaint requested that the Administrative Law Judge issue a finding that Respondent willfully, flagrantly and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order that the facts and circumstances of the violation 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.; hereinafter "Rules of Practice") applicable to this proceeding (7 C.F.R. §1.138).

Findings of Fact

1. John A. Foster, d/b/a Fosters Farm Fresh Produce, (hereinafter "Respondent") is a corporation organized and existing under the laws of the state of California. Its business address is 75 San Miguel Avenue, Suite 2, Salinas, California 93901. Respondent's mailing address 691 Braeburn Road, Mansfield, Ohio 44907.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 20010708 was issued to Respondent on March 16, 2001. This license terminated on March 16, 2003, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499(a)), when Respondent failed to pay the required annual renewal fee.

3. Respondent, during the period February 2003 through July 2003, on or about the dates and in the transactions set forth in Exhibit A, attached and incorporated herein by reference, failed to make full payment promptly to two sellers of the agreed purchase prices in the total amount of \$220,755.41 for 50 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate and foreign commerce.

Conclusion

Respondent's failure to make full payment promptly to two sellers of the agreed purchase prices of the perishable agricultural commodities described 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)).

Order

Respondent willfully, flagrantly and repeatedly violated Section 2(4) of the PACA (7 U.S.C. § 499b(4)). The facts and circumstances of Respondent's violation shall be published.

Respondent explicitly waives all further proceedings in this disciplinary proceeding under the Perishable Agricultural Commodities Act. The Administrative Law Judge will retain jurisdiction over this case pending any final motions by the parties.

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



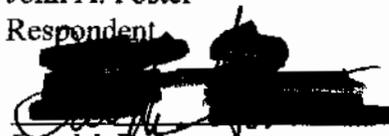
Christopher Young-Morales
Attorney for Complainant

2-23-06
Date



John A. Foster
Respondent

2-1-06
Date



Eric M. Forman
Associate Deputy Administrator
Fruit and Vegetable Programs
Agricultural Marketing Service

2/28/06
Date

Done at Washington, D.C.

this 1st day of March, 2006



Administrative Law Judge