

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) PACA Docket No. D-01-0017
American Produce Company,)
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.) (PACA). On June 7, 2001, Complainant filed a complaint alleging that in January 1997, Respondent willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to truly and correctly account for eight transactions of perishable agricultural commodities it received, accepted and sold and by making, for a fraudulent purpose, false and misleading statements in connection with transactions involving a perishable agricultural commodity. The complaint requested the issuance of an order suspending Respondent's PACA license for 90 days or assessing a civil penalty with an equivalent deterrent effect of a 90 day suspension.

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 applicable to this proceeding (7 C.F.R. § 1.138).

Findings of Fact

1. American Produce Company (hereinafter, "Respondent"), is a corporation organized and existing under the laws of the State of Delaware. Its business address is 1601 E. Olympic Blvd, Unit 500, Los Angeles, CA 90021. Its mailing address is P. O. Box 21843, Los Angeles, CA 90021-1183.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 920354 was issued to Respondent on December 11, 1991. This license has been renewed annually and is next subject to renewal on or before December 11, 2001.

3. As set forth more fully in paragraph III (a) of the Complaint, during the period April 1997 through November 1997, Respondent failed to truly and correctly account for eight transactions of perishable agricultural commodities it received, accepted and sold on behalf of two suppliers in that the formal account of sales and/or supporting documents sent to the shippers were not consistent with other documentation and/or the documentation was erroneous.

4. As set forth more fully in paragraph III (b) of the Complaint, during the period April 1997 through November 1997, Respondent altered the contents of documents sent to the supplier to support its accountings, the effect of which was to make false

and misleading statements in connection with produce Respondent received, accepted and sold in interstate and foreign commerce.

Conclusion

Respondent's alteration of documents created a failure to truly and correctly account for eight transactions of perishable agricultural commodities it received, accepted and sold and Respondent's making false and misleading statements in connection with transactions involving perishable agricultural commodities, as set forth in Findings of Fact 3 and 4 above, constitute flagrant and repeated violations of section 2(4) of the PACA, for which the Order below is issued.

Order

In lieu of a sixty day suspension, the following sanction is imposed upon Respondent American Produce:

1. Respondent shall pay a civil penalty of \$55,000; and
2. Respondent shall make restitution in the amount of \$12,810.42 to the two suppliers listed in the Complaint. (See Attachment 1).

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

Done at Washington, D.C.

this 19th of June, 2001

Dorothy G. Baker
Administrative Law Judge

For Respondent

For Complainant

Dennis Werner
Dennis Werner
President
American Produce Company

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

Randy Sunshine, Esq.
Randy Sunshine, Esq.
Attorney for Respondent

Jane McCavitt, Esq.
Jane McCavitt, Esq.
Attorney for Complainant

Restitution amounts for American Produce Company

<u>Shipper</u>	<u>Ship Date</u>	<u>Lot No.</u>	<u>Original Invoice</u>	<u>Amount Paid</u>	<u>Balance</u>
Sales King International	4/14/97	81611	\$2,400.00	\$156.00	\$2,244.00
	4/23/97	82124	1,608.00	134.00	1,474.00
	9/15/97	92277	9,264.00	833.76	8,430.24
Apio, Inc.	4/22/97	82008	open sale	0.00	<u>622.18*</u>
				Total	\$12,810.42

* Net returns according to internal American Produce document.

ATTACHMENT 1.