

UNITED STATES DEPARTMENT OF AGRICULTURE

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01/27/20

BEFORE THE SECRETARY OF AGRICULTURE

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In re:) PACA Docket No. D-03-0011
)
BEAR KODIAK PRODUCE, INC.,)
)
Respondent) Decision Without Hearing
by Reason of Default

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Preliminary Statement

This is a disciplinary proceeding under the Perishable Agriculture Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) [hereinafter referred to as the "Act"], instituted by a complaint filed on February 14, 2003, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The complaint alleges that during the period of January through December 2001, Respondent Bear Kodiak Produce, Inc. [hereinafter "Respondent"] failed to make full payment promptly to seven sellers of the agreed purchase prices in the total amount of \$546,461.90 for 199 lots of perishable agricultural commodities which it purchased, received and accepted in interstate commerce.

Copies of the complaint filed on February 14, 2003, were sent by certified mail to the Respondent at 3529 East Golf Links Road, Tucson, Arizona 85713 and to P.O. Box 28888, Tucson, Arizona 85726 on the filing date. The envelope containing the complaint copy sent to the 3529 East Golf Links Road address was stamped "Attempted, Not Known and Returned To Sender" by the United States Postal Service (USPS) and returned to the Hearing Clerk. On March 4, 2003, a copy of the complaint was sent by regular mail to 3529 East Golf Links Road, Tucson, Arizona 85713.

The complaint is deemed received by Respondent on the remaining date of

March 4, 2003, by regular mail to Respondent's last known principal place of business in accordance with section 1.147(c) of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes [hereinafter the "Rules of Practice"] (7 C.F.R. § 1.147(c)).

The envelope containing the complaint copy sent to P.O. Box 28888, Tucson, Arizona 85726 was returned by the USPS showing a forwarding address of 177 N. Church Ave., Suite 625, Tucson, Arizona 85701-1115. Another complaint copy was sent via certified mail to the forwarding address at 177 N. Church Ave., Suite 625, Tucson, Arizona 85701-1115. That copy was served on Respondent on March 10, 2003, when received by the Respondent's agent who signed the Return Receipt, which was then returned to the Hearing Clerk by the USPS.

The time for filing an answer having expired, and upon motion of the Complainant for the issuance of a default decision, the following Decision and Order shall be issued without further proceedings pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent is a corporation organized and existing under the laws of the State of Arizona. Its business address was 3529 East Golf Links Road, Tucson, Arizona 85713. Its mailing address was P.O. Box 28888, Tucson, Arizona 85726.
2. At all times material herein, Respondent was licensed under the provisions of the Act. License number 911693 was issued to Respondent on September 10, 1991. This license terminated on September 10, 2002, pursuant to Section 4(a) of the Act (7 U.S.C § 499d(a)), when Respondent failed to pay the required annual renewal fee.

3. As more fully set forth in paragraph III of the complaint, during the period of January through December 2001, Respondent purchased, received and accepted in interstate commerce, from seven sellers, 199 lots of fruits and vegetables, all being perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices, in the total amount of \$546,461.90.

Conclusions

Respondent's failure to make full payment promptly with respect to the 199 transactions described in Finding of Fact No. 3 above, constitutes willful, repeated and flagrant violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)), for which the Order below is issued.

Order

A finding is made that Respondent has committed willful, flagrant and repeated violations of Section 2 of the Act (7 U.S.C. 499b(4)), and the facts and circumstances of the violations shall be published.

This Order shall take effect on the eleventh day after this Decision becomes final.

Pursuant to the Rules of Practice, this Decision will become final without further proceedings thirty-five days after service hereof unless appealed to the Secretary by a party to the proceeding within thirty 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.

this 9 day of JULY, 2003

Jill S. Clifton

Jill S. Clifton
Administrative Law Judge