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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
The Fruit Center, Inc.	)	PACA Docket No. D-01-0015
and Michael G. Litvin	)	
	)	
Respondents	)	

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 referred to as the Act or PACA. Complainant filed a complaint on May 4, 2001, alleging that Respondent The Fruit Center, Inc., violated section 8(b) of the PACA (7 U.S.C. § 499h(b)) by unlawfully employing Respondent Michael G. Litvin without securing an appropriate bond approved by the Secretary of Agriculture. The complaint sought the sanction of a 90-day suspension of the PACA license of Respondent Fruit Center, and an order extending the period of employment sanction of Respondent Litvin for an additional one year period.

Respondents and the Complainant have now agreed to the entry of a Decision Without Hearing by Reason of Consent as set forth herein. Therefore, pursuant to the consent decision provisions of the Rules of Practice (7 C.F.R.§ 1.138), the following Decision Without Hearing by Reason of Consent is issued without further procedure or hearing.

Findings of Fact

1. Respondent The Fruit Center, Inc., is a corporation organized and existing under the laws of the state of New Hampshire. Its business and mailing address is 15 Webster Street, Manchester, New Hampshire, 03104.

2. At all times material herein, Respondent Fruit Center was licensed under the provisions of the PACA. License number 961063 was issued to this Respondent on March 14, 1996. This license has been renewed annually and is next subject to renewal on or before March 14, 2002.

3. Respondent Michael G. Litvin was found to be responsibly connected with Queen City Farms, Inc., a firm which was declared to have committed willful, repeated and flagrant violations of section 2 of the PACA in a decision and order effective February 28, 1998. Therefore, pursuant to section 8(b) of the PACA, as a result of the February 28, 1998, decision and order against Queen City Farms, Inc., Michael G. Litvin was barred from employment or affiliation with a PACA licensee until February 28, 1999, and then, could be affiliated with a licensee for another year only after the posting of a USDA approved surety bond and approval of the Secretary.

4. Complainant provided notice to Respondent Fruit Center by certified letter dated February 11, 1999, that Respondent Fruit Center could not employ Michael G. Litvin unless the Secretary approved the employment and Respondent Fruit Center provided a surety bond approved by the USDA. The letter notified Respondent Fruit Center that its license could be suspended or revoked if if continued to employ Michael G. Litvin without posting such a bond. The attorney for Respondent Fruit Center received the aforementioned letter on February 17, 1999. Therefore, pursuant to section 8(b) of the PACA, Respondent Fruit Center had 30 days,

until March 19, 1999, to either post a USDA approved surety bond or terminate its employment of Michael G. Litvin. Respondent Fruit Center failed to obtain the approval of the Secretary and to post a USDA approved surety bond by March 19, 1999, but continued to employ[1] Michael Litvin in violation of section 8(b) of the PACA (7 U.S.C. §499h(b)).

Conclusions

The unlawful employment of Respondent Litvin by Respondent The Fruit Center, without securing an appropriate bond approved by Complainant, as set forth above, is a violation of section 8(b) of the PACA (7 U.S.C. § 499h(b)), for which the Order below is issued.

Order

Respondent The Fruit Center, Inc., is found to have employed Respondent Michael G. Litvin, in violation of section 8(b) of the PACA (7 U.S.C. § 499h(b)).

Respondent The Fruit Center, Inc. shall serve a 90-day suspension which shall be held in abeyance pending the payment of a civil penalty in the amount of $45,000.00 as set forth in the Understanding Regarding Civil Penalty and Payment Terms entered into between Complainant and Respondent.

Employment sanctions restricting the employment of Michael G. Litvin shall be extended for one year in accordance with section 8(b) fo the Act (7 U.S.C. 499h(b)). Michael G. Litvin shall not be employed by a PACA licensee for the period of one year from the effective date of October 1, 2001 through September 30, 2002.

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[1] Under section 1(b)(10) of the PACA, "the terms 'employ' and 'employment' mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment".

This order shall become effective on October 1, 2001. Copies hereof shall be served upon the parties.

Lee A. Litvin
The Fruit Center, Inc.

Michael G. Litvin

John F. Griffin, Jr.
Griffin & Owen, P.C.
Attorney for Respondents

For Eric M. Forman
Associate Deputy Administrator
Fruit and Vegetable Programs
Agricultural Marketing Service
U.S. Department of Agriculture

Ann K. Parnes
Office of General Counsel
U.S. Department of Agriculture
Attorney for Complainant

Issued this 20 day of September 2001

Administrative Law Judge