

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA Docket No. D-99-0009
)
G&G Sales Corporation and Loren)
Girsberger,)
) Decision Without Hearing by Reason of
Respondents) Default

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (PACA), instituted by a complaint filed on May 5, 1999, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture.

The complaint alleged that Respondents willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) when Respondent G&G Sales Corporation, under the direction, management and control of Respondent Loren Girsberger, during the period August 1997 through March 1998, failed to make full payment promptly to 15 sellers of the agreed purchase prices in the total amount of \$598,293.86 for 200 lots of perishable agricultural commodities which the Respondent G&G Sales Corporation purchased, received and accepted in interstate commerce.

The complaint requested that the Administrative Law Judge issue a finding that Respondents willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order such finding published.

A copy of the complaint was served upon each Respondent, which complaint has not been answered. The time for filing an answer having run, and upon the motion of Complainant for the issuance of a Decision Without Hearing by Reason of Default, the following Decision and

Order is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. G&G Sales Corporation (hereinafter, sometimes referred to as the "corporate Respondent"), is a corporation organized and existing under the laws of the State of Minnesota. Its business mailing address is 7317 Cahill Road, Suite 217, Edina, Minnesota 55439. Upon information and belief, the corporate Respondent ceased conducting business in February 1998.

2. At all times material herein, the corporate Respondent was licensed under the PACA. License number 910777 was issued to the corporate Respondent on March 13, 1991. This license terminated on March 13, 1998, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), upon the corporate Respondent's failure to file the required annual renewal fee.

3. Loren Girsberger (hereinafter, sometimes referred to as the "individual Respondent"), is an individual whose address is 6625 Gleason Road, Edina, Minnesota 55439. The individual Respondent is the husband of Stella W. Girsberger who, at all times material herein, was the president, a director and 90 percent shareholder of the corporate Respondent. At all times material herein, the individual Respondent directed, managed and controlled the corporate Respondent.

4. As more fully set forth in paragraphs III and IV of the complaint, the corporate Respondent was the alter ego of the individual Respondent.

5. As more fully set forth in paragraph III of the complaint, the corporate Respondent, under the direction, management and control of the individual Respondent, during the period August 1997 through March 1998, failed to make full payment promptly to 15 sellers

of the agreed purchase prices in the total amount of \$598,293.86 for 200 lots of perishable agricultural commodities which the corporate Respondent purchased, received and accepted in interstate commerce.

Conclusions

Respondents' actions, as set forth in Finding of Fact 5 above, were in willful, flagrant and repeated violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)), for which the Order below is issued.

Order

Respondents G&G Sales Corporation and Loren Girsberger are hereby found to have committed willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

This Order shall be published.

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

Pursuant to the Rules of Practice governing procedures under the Act, 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 and 1.145).

Copies hereof shall be served upon the parties.

Done at Washington, D.C.
December 13, 1999


Administrative Law Judge