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UNITED STATES DEPARTMENT OF AGRICULTURE OALJ/HCO

BEFORE THE SECRETARY OF AGRICULTURE 2000 JUL 31 A 10:57

In re:) PACA Docket No. D-00-0010
)
Have A Potato, Inc. d/b/a Produce)
Unlimited,)
) Decision Without Hearing by Reason of
Respondent) Default

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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 March 17, 2000, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture.

The complaint alleged that Respondent willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) during the period November 1998 through April 1999, by failing to make full payment promptly to 17 sellers of the agreed purchase prices in the total amount of \$326,808.23 for 90 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 and order such finding published.

A copy of the complaint was served upon 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. Have A Potato, Inc. d/b/a Produce Unlimited (hereinafter, "Respondent"), is a corporation organized and existing under the laws of the State of New York. Its business mailing address is 449-461 New York City Terminal Market, Bronx, New York 10474.

2. At all times material herein, Respondent was licensed under the PACA. License number 962306 was issued to Respondent on August 14, 1996. This license terminated on August 14, 1999, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), upon Respondent's failure to pay the required annual renewal fee.

3. As more fully set forth in paragraph III of the complaint, Respondent, during the period November 1998 through April 1999, failed to make full payment promptly to 17 sellers the agreed purchase prices in the total amount of \$326,808.23 for 90 lots of perishable agricultural commodities which it purchased, received and accepted in interstate and foreign commerce.

Conclusions

Respondent's actions, as set forth in Finding of Fact 3 above, constitute willful, flagrant and repeated violations of section 2(4) of the PACA, for which the Order below is issued.

Order

Respondent is hereby found to have committed willful, flagrant and repeated violations of section 2(4) of the PACA.

This Order shall be published.

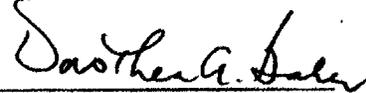
This Order shall take effect on the eleventh day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision Without Hearing by Reason of Default 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.

July 28, 2000



Administrative Law Judge