

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re:) PACA Docket No. D-02-0008
)
Otero Frozen Foods, L.L.C.,)
)
)
) Decision Without Hearing
Respondent) 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 12, 2002, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleged that during the period October 2, 2000, through February 3, 2001, Respondent Otero Frozen Foods, L.L.C. (hereinafter "Respondent") failed to make full payment promptly to 10 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$211,467.40 for 85 lots of onions which it purchased, received, and accepted in interstate commerce.

A copy of the Complaint was mailed to Respondent by certified mail at its last known principal place of business on February 12, 2002, and was returned with the notation "Moved-Left No Address" to the office of the Hearing Clerk on March 5, 2002. A copy of the Complaint was remailed to Respondent at the same address by ordinary mail on March 19, 2002 pursuant to Section 1.147(c) of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §1.130 *et seq.*, hereinafter "Rules of Practice"). Also, a copy of the Complaint

was sent to the forwarding address and it is indicated it was received March 14, 2002, by signed receipt of Certified Mail #70993400001388058317. Respondent has not answered the Complaint. The time for filing an Answer having expired, and upon motion of the Complainant for the issuance of a Default Order, the following Decision and Order shall be issued without further procedure pursuant to Section 1.139 of the Rules of Practice.

Finding of Fact

1. Respondent is a limited liability company registered in the State of Colorado on April 23, 1999. Respondent's mailing address is P. O. Box 4835, Blue Jay, California 92317-4835. Its business address is 20094 Hwy. 50, Rocky Ford, Colorado 81067-9473.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 991073 was issued to Respondent on May 20, 1999. This license terminated on May 20, 2001, pursuant to Section 4(a) of the PACA (7 U.S.C. §499d(a)), when Respondent failed to pay the required annual renewal fee.

3. The Secretary has jurisdiction over Respondent and the subject matter involved herein.

4. As set forth in paragraph III of the Complaint, during the period October 2, 2000, through February 3, 2001, Respondent purchased, received, and accepted in interstate commerce, from 10 sellers, 85 lots of onions, a perishable agricultural commodity, but failed to make full payment promptly of the agreed purchase prices, in the total amount of \$211,467.40.

Conclusions

Respondent's failure to make full payment promptly with respect to the 85 transactions set forth in Finding of Fact No. 4 above constitutes wilful, 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

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

This order shall take effect on the 11th day after this Decision becomes final.

Pursuant to the Rules of Practice, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 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 parties.

Done at Washington, D.C.

this 26th day of September, 2002



Administrative Law Judge