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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

2003 JAN 21 P 4 26

In re:)	PACA Docket No. D-03-0001
)	
Pelican Produce, Inc.)	
)	
Respondent)	Decision Without Hearing by Reason of Default

Preliminary Statement

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"), instituted by a Notice to Show Cause and Complaint filed on October 8, 2002, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleges that during the period July 2001 through August 2002, Respondent Pelican Produce, (hereinafter "Respondent") failed to make full payment promptly to 5 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$274,690.19 for 84 lots of perishable agricultural commodities that it purchased, received, and accepted in interstate and foreign commerce.

Respondent's PACA license terminated on July 7, 2002, pursuant to Section 4(a) of the Act (7 U.S.C. § 499d(a)), because Respondent failed to pay the required renewal fee. On September 9, 2002, Complainant received Respondent's completed application for a new PACA license. In accordance with Section 4(d) of the Act (7 U.S.C. § 499d(d)), Complainant withheld the issuance of a new license pending its investigation to determine whether Respondent was

unfit to engage in business subject to the Act. As a result of the investigation, it was determined that Respondent had failed to make full payment promptly for its purchases of perishable agricultural commodities as stated above. Therefore, Complainant alleges that Respondent is unfit to engage in the business of a commission merchant, dealer, or broker because Respondent has engaged in practices of a character prohibited by the PACA.

The Associate Deputy Administrator filed the Notice to Show Cause why Respondent should not be denied a PACA license on October 8, 2002, and a Complaint alleging the payment violations. The Notice to Show Cause and Complaint were sent to Respondent via certified mail on October 9, 2002. On October 10, 2002, the Hearing Clerk re-sent the Complaint along with a cover sheet informing Respondent that the docket number for this case had changed, and that therefore, Respondent had ten (10) days from service of that letter to file an answer. The Complaint and Notice to Show Cause were mailed to both Respondent's business and mailing address. The copy mailed to Respondent's mailing address was served on October 17, 2002. The copy mailed to Respondent's business address was returned undeliverable. On November 5, 2002, the Hearing Clerk re-sent the Notice to Show Cause and Complaint, via regular mail, to a different address for Respondent, 148 Harbor Circle, New Orleans, Louisiana 71026. The Hearing Clerk received no response from Respondent.

Respondent failed to file an answer to the Complaint within the time allowed for that purpose, and thus waived its opportunity for a hearing. Since Respondent was given an opportunity for a hearing to show cause why its application for license should not be denied but failed to avail itself of its right and Respondent failed to file an answer, upon motion of the Complainant for the issuance of a Default Order, the following Decision and Order shall be

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. Respondent is a corporation organized and existing under the laws of the State of Louisiana. Its business address is 740 St. George Avenue, Jefferson, Louisiana 70121. Its mailing address is P. O. Box 26336, New Orleans, Louisiana 70126.

2. License number 941514 was issued to Respondent on July 7, 1994. This license terminated on July 7, 2002, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required renewal fee.

3. During the period May 6, 2001, through August 20, 2002, Respondent failed to make full payment promptly to five sellers of the agreed purchase prices in the total amount of \$274,690.19 for 84 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate commerce.

4. On September 9, 2002, Complainant received Respondent's completed application for a PACA license.

Conclusions

Respondent was given an opportunity for a hearing to show cause why its application for a PACA license should not be denied, pursuant to Section 4(d) of the Act (7 U.S.C. § 499d(d)); Respondent, however, failed to avail itself of its right. Moreover, Respondent failed to answer the allegations in the Complaint, which constitutes a waiver of hearing under section 1.139 of the Rules of Practice and is deemed an admission of the allegations of the Complaint (7 C.F.R. 1.136). Respondent's failure to make full payment promptly with respect to the transactions set forth in Finding of Fact No. 3 above, constitutes willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)). As a result of Respondent's failure to make full payment promptly for its purchases of perishable agricultural commodities, Respondent is unfit to engage in the business of a commission merchant, dealer, or broker because Respondent has engaged in practices of a character prohibited by the PACA pursuant to Section 4(d) of the Act (7 U.S.C. § 499d(d)).

Order

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

Furthermore, a finding is made pursuant to Section 4(d) of the PACA (7 U.S.C. § 499d(d)) that Respondent is unfit to be licensed under the PACA because Respondent has engaged in practices of a character prohibited by the PACA. Thus, Respondent's application for a PACA license is refused.

This order shall take effect on the 11th 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 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 the parties.

Done at Washington, D.C.

this 21 day of January, ²⁰⁰³~~2002~~ JSC

Jill S. Clift

Administrative Law Judge