

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: ) PACA Docket No. D-00-0025  
)  
Sunbelt Fruit & Vegetable Co., Inc., )  
)  
Respondent ) **Decision Without Hearing**

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (the PACA), instituted by a complaint filed on August 29, 2000, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture (USDA) (Complainant).

The complaint alleged that Respondent Sunbelt Fruit & Vegetable Co., Inc. (Sunbelt) committed willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), by failing to make full payment promptly to 11 sellers of the agreed purchase prices for 714 lots of perishable agricultural commodities that it purchased, received, and accepted in interstate and foreign commerce in the amount of \$479,685.65 during the period August 1998 through December 1999. The complaint further alleged that Sunbelt's PACA license was suspended on October 27, 1999, pursuant to section 7(d) of the PACA (7 U.S.C. § 499g), for failure to comply with a Reparation Order.

Complainant requested that, as a result of Sunbelt's violations of the PACA, a finding be made that Sunbelt committed willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and that such finding be ordered published.

The complaint was served on Sunbelt on October 3, 2000. Sunbelt's answer generally denied the allegations of the complaint pertaining to its failure to make full payment promptly. Sunbelt had until January 31, 2001, under *In re Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 548-549 (1998), to come into full compliance with PACA. *Scamcorp* sets forth the Department's policy that when a complaint is filed alleging the failure to make full payment promptly under the PACA, if the Respondent is not in full compliance with the PACA within 120 days after the complaint is served upon the Respondent or the date of the hearing, whichever occurs first, the case will be treated as a "no pay" case for which the sanction is license revocation.

On August 3, 2001, and on October 11, 2002, Complainant moved for an order requiring Sunbelt to show cause why a decision without hearing should not be issued against it, due to its failure to make full and prompt payment for produce purchases, in willful, flagrant and repeated violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)). I ordered Sunbelt to show cause, by November 25, 2002, why a Decision Without Hearing should not be issued, based on the facts contained in the two Affidavits of USDA employee Dean Johnson, executed July 19, 2001 and August 13, 2002. Sunbelt has been served with Complainant's motions, Dean Johnson's Affidavits, and my Order to Show Cause. To date, Sunbelt has filed no response. Consequently, I find this case to be a "no pay" case.

#### **Findings of Fact**

1. Sunbelt, a corporation organized and existing under the laws of the State of Texas, has the following address: c/o James Heffington, President, 621 Loch N Green Trl, Arlington, Texas 76021.

2. Sunbelt was issued license number 981618 under the provisions of the PACA on July 17, 1998, but that license was suspended on October 27, 1999, pursuant to section 7(d) of the PACA (7 U.S.C. § 499g), for Sunbelt's failure to comply with a Reparation Order.
3. The Secretary of Agriculture has jurisdiction over Sunbelt and the subject matter herein.
4. Sunbelt willfully failed to make full, prompt payment for fruits and vegetables purchased, received and accepted in interstate and foreign commerce, in violation of section 2(4) of the PACA (7 U.S.C. § 499b(4)) during August 1998 through December 1999.
5. Sunbelt willfully failed to make full payment promptly to 11 creditors (sellers) of the agreed purchase prices for 714 lots of perishable agricultural commodities that it purchased, received, and accepted in interstate and foreign commerce in the amount of \$479,685.65 during August 1998 through December 1999.
6. Sunbelt still owed \$468,086.45 to 10 creditors (sellers) as of February 13, 2001, of which \$448,224.35 had been set forth in the complaint.

### **Conclusions**

1. Sunbelt committed willful, flagrant and repeated violations of section 2(4) of the Perishable Agricultural Commodities Act (the PACA) (7 U.S.C. § 499b(4)), during August 1998 through December 1999.
2. Sunbelt was not in full compliance with the PACA within 120 days after the complaint was served upon it; consequently, this is a "no pay" case, for which the sanction is license revocation.

### Order

1. Sunbelt has committed willful, flagrant and repeated violations of section 2 of the Perishable Agricultural Commodities Act (the PACA) (7 U.S.C. § 499b), and the facts and circumstances of the violations shall be published.

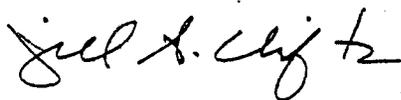
2. Sunbelt's PACA license shall be revoked.

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

This Decision becomes final without further proceedings 35 days after service unless appealed to the Judicial Officer within 30 days after service, as provided in section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies of this Decision shall be served by Hearing Clerk upon each of the parties.

Done at Washington, D.C.  
this 31st day of December, 2002



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Jill S. Clifton  
Administrative Law Judge