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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Cheung Chau Trading, Inc.) [PACA-D]
) Docket No. **14-0099**
)
Respondent)
AND
In re:)
)
Super Aloha, Ltd.) [PACA-D]
) Docket No. **14-0100**
)
Respondent)
AND
In re:)
)
Super Save Market, LLC) [PACA-D]
) Docket No. **14-0101**
)
Respondent)
AND
In re:)
)
Tony S. Liu) [PACA-D]
) Docket No. **14-0102**
)
Respondent)

Decision and Order on the Written Record

Appearances:

Christopher P. Young, Esq., Office of the General Counsel, United States Department of Agriculture, Washington, D.C., for the Complainant AMS¹; and

1. The Complainant is the Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, United States Department of Agriculture (“AMS” or “Complainant”).

Tony S. Liu, Respondent, representing himself (appearing *pro se*), and representing in addition to himself, three entities: Cheung Chau Trading, Inc.; Super Save Market, LLC; and Super Aloha, Ltd.

Decision Summary

1. Four Respondents, Cheung Chau Trading, Inc., Super Aloha, Ltd., Super Save Market, LLC, and Tony S. Liu, willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) during 2011 through 2013 by failing to make full payment promptly of the purchase prices, or balances thereof, for a combined total of \$120,931.25 for fruits and vegetables, all being perishable agricultural commodities that Cheung Chau Trading, Inc., Super Aloha, Ltd., Super Save Market, LLC, and Tony S. Liu purchased, received, and accepted in the course of interstate or foreign commerce.

Parties and Allegations

2. The Complainant is the Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, United States Department of Agriculture (herein frequently “AMS” or “Complainant”).

3. This “Decision and Order on the Written Record” decides the allegations brought under the PACA, the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a - 499t), and the regulations issued thereunder, 7 C.F.R. Part 46, regarding four Respondents.² The four Respondents are Cheung Chau Trading, Inc., a corporation; Super

2. This “Decision and Order on the Written Record” does not address allegations regarding Paradise Corner, LLC, Honolulu, Hawaii. Allegations regarding Paradise Corner, LLC [PACA-D] Docket No. 14-0098, will be decided separately. Paradise Corner, LLC, is another entity which is directed, controlled, and managed by Tony S. Liu.

Aloha, Ltd., a limited company; Super Save Market, LLC, a limited liability company; and Tony S. Liu, an individual.

4. Cheung Chau Trading, Inc. is a corporation organized and existing under the laws of the state of Hawaii. Super Save Market, LLC is a limited liability company organized and existing under the laws of the state of Hawaii. Super Aloha, Ltd. is a limited company organized and existing under the laws of the state of Hawaii. Tony S. Liu is an individual who directed, controlled and managed each of these three entities at all times material herein.

5. AMS alleged in the Complaint filed on April 30, 2014, that the Respondents willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly of the agreed purchase prices, or balances thereof, for the perishable agricultural commodities that they purchased, received, and accepted in interstate and foreign commerce, as more particularly described in the Complaint and in Appendix A,³ Appendix B, Appendix C, and Appendix D to the Complaint. AMS asks the judge so to find, and to order the facts and circumstances of the violations published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

6. The four Respondents, Cheung Chau Trading, Inc., Super Aloha, Ltd., Super Save Market, LLC, and Tony S. Liu, participated in two telephone conferences with counsel for AMS Christopher Young and me, on February 18, 2015 and on June 26, 2015. These four

3. Appendix A relates to Paradise Corner, LLC and has not been considered for purposes of this "Decision and Order on the Written Record".

Respondents represented that they would file something responsive to Appendix B, Appendix C, and Appendix D to the Complaint (*see*, for example, Respondents' letter filed June 23, 2014, requesting additional time), but they never did. Filings that were received from Respondents relate to Appendix A and Paradise Corner, LLC [PACA-D] Docket No. 14-0098, which I will decide separately.

7. My Notice filed June 26, 2015 confirmed what I stated to Mr. Young and to Mr. Liu during our telephone conference on June 26, 2015, that I would issue a Decision on the Written Record. As to these four Respondents, Cheung Chau Trading, Inc., Super Aloha, Ltd., Super Save Market, LLC, and Tony S. Liu, the record closed on July 22, 2015, as stated in that Notice.

8. The Respondents' request for a 14-day extension from July 22, 2015 is denied. For purposes of this "Decision and Order on the Written Record", additional filings would not change the Findings of Fact, Conclusions, and Order. Even if these four Respondents were eventually to complete payment in full, that would not negate the requirement to pay promptly under the PACA. *See* 7 C.F.R. § 46.2(aa) regarding making full payment promptly, especially 7 C.F.R. § 46.2(aa)(5) and (11).

9. I measure at two times the past due amounts that determine the outcome of this "Decision and Order on the Written Record": (a) when the amounts were first past due and unpaid; that is, during 2011 through 2013; and, when AMS employee Scott McKenna, Senior Marketing Specialist, determined the remaining balances in January 2015, because more than 120 days had passed since the Complaint was served.

Discussion

10. Section 2(4) of the PACA (7 U.S.C. § 499b(4)) requires licensed produce dealers to make “full payment promptly” for fruit and vegetable purchases, usually within ten days of acceptance, unless the parties agreed to different terms prior to the purchase. *See* 7 C.F.R. § 46.2(aa)(5) and (11) (defining “full payment promptly”).

11. The policy of the U.S. Department of Agriculture in cases where PACA licensees have failed to make full or prompt payment for produce is straightforward:

In any PACA disciplinary proceeding in which it is alleged that a respondent has failed to pay in accordance with the PACA and respondent admits the material allegations in the complaint and makes no assertion that the respondent has achieved full compliance or will achieve full compliance with the PACA within 120 days after the complaint was served on the respondent, or the date of the hearing, whichever occurs first, the PACA case will be treated as a “no-pay” case. In any “no-pay” case in which the violations are flagrant or repeated, the license of a PACA licensee, shown to have violated the payment provisions of the PACA, will be revoked.

Scamcorp, Inc., d/b/a Goodness Greeness, 57 Agric. Dec. 527, 549 (U.S.D.A. 1998).

12. The appropriate sanction in a “no-pay” case where the violations are flagrant and repeated is license revocation. A civil penalty is not appropriate because “limiting participation in the perishable agricultural commodities industry to financially responsible persons is one of the primary goals of the PACA”, and it would not be consistent with the purposes of the PACA to require a PACA violator to pay a civil penalty rather than pay produce sellers to whom the PACA violator owes money. *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 570-71 (U.S.D.A. 1998).

13. Here, the four Respondents, Cheung Chau Trading, Inc., Super Aloha, Ltd., Super Save Market, LLC, and Tony S. Liu, “shifted the risk of nonpayment to sellers of the perishable agricultural commodities”, intentionally, or with careless disregard for the payment requirements in section 2(4) of the PACA (7 U.S.C. § 499b(4)). *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 553 (U.S.D.A. 1998). Here, buying perishable agricultural commodities without sufficient funds to comply with the prompt payment provision of the PACA is regarded as an intentional violation of the PACA or, at the least, careless disregard of the statutory requirements.

14. Where there is no license to revoke, the appropriate sanction is a finding of willful, flagrant and repeated violations of section 2(4) of the PACA and publication of that finding. *Furr’s Supermarkets Inc.*, 62 Agric. Dec. 385, 386-387 (U.S.D.A. 2003).

15. A respondent in an administrative proceeding does not have a right to an oral hearing under all circumstances, and an agency may dispense with a hearing when there is no material issue of fact on which a meaningful hearing can be held. *H. Schnell & Company, Inc.*, 57 Agric. Dec. 1722, 1729 (U.S.D.A. 1998). *See also, Five Star Food Distributors, Inc.*, 56 Agric. Dec. 880, 894 (U.S.D.A. 1997).

Findings of Fact regarding Cheung Chau Trading, Inc., Honolulu, Hawaii

16. Cheung Chau Trading, Inc., Respondent, is or was a corporation organized and existing under the laws of the state of Hawaii. Cheung Chau Trading, Inc.’s business and mailing address is or was (b) (6).

17. At all times material herein, Cheung Chau Trading, Inc. was not licensed under the PACA, but was operating subject to the provisions of the PACA, the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a - 499t), and the regulations issued thereunder, 7 C.F.R. Part 46.

18. At all times material herein, Tony S. Liu, an individual, directed, controlled and managed Cheung Chau Trading, Inc. Tony S. Liu's business and mailing address is (b) (6)

(b) (6) the same as that of Cheung Chau Trading, Inc.

19. Cheung Chau Trading, Inc. failed, during October 10, 2011 through December 3, 2011, to make full payment promptly of the purchase prices, or balances thereof, of \$64,295.81 for fruits and vegetables, in 65 lots, all being perishable agricultural commodities, that Cheung Chau Trading, Inc. purchased, received, and accepted in the course of interstate or foreign commerce, from Aloun Farms, Inc., Kapolei, Hawaii. *See* Appendix B to Complaint.

20. Cheung Chau Trading, Inc. still owed, past due and unpaid, to Aloun Farms, Inc., Kapolei, Hawaii, the bulk of that \$64,295.81 more than two years later. Controller Sunisa (Kae) Sou stated to AMS employec Scott McKenna, Senior Marketing Specialist, on January 15, 2015, that Aloun Farms, Inc. continues to sell fresh produce to Cheung Chau Trading, Inc. on a cash basis and has received \$8,328.81 toward the debt and is still owed \$55,967.00. *See* Declaration of Scott McKenna, attached to AMS's Additional Information filed July 22, 2015.

21. The Complaint was served May 3, 2014. More than 120 days later, Cheung Chau Trading, Inc. still had failed to pay past due amounts (at minimum, the \$55,967.00 still owed to fruit and vegetable seller Aloun Farms, Inc., Kapolei, Hawaii, on January 15, 2015).

Cheung Chau Trading Inc.'s inability to assert that it had achieved full compliance with the PACA within 120 days of having been served with the Complaint makes this a "no-pay" case. "Full compliance" requires not only that the respondent have paid all produce sellers in accordance with the PACA, but also, that the respondent have no credit agreements with produce sellers for more than 30 days. *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 549 (U.S.D.A. 1998); *Carpentino Bros., Inc.*, 46 Agric. Dec. 486, 505-06 (U.S.D.A. 1987), *aff'd*, 851 F.2d 1500 (D.C. Cir. 1988).

22. Cheung Chau Trading Inc.'s violations of the PACA are willful within the meaning of the Administrative Procedure Act (*see* 5 U.S.C. § 558(c)) because of "the length of time during which the violations occurred and the number and dollar amount of the violative transactions involved." *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 553 (U.S.D.A. 1998); *Allred's Produce v. U.S. Dep't of Agric.*, 178 F.3d 743, 748 (5th Cir.), *cert. denied*, 528 U.S. 1021 (1999); *Cox v. U.S. Dep't of Agric.*, 925 F.2d 1102, 1105 (8th Cir.), *cert. denied*, 502 U.S. 860 (1991); *American Fruit Purveyors, Inc. v. United States*, 630 F.2d 370, 374 (5th Cir. 1980), *cert. denied*, 450 U.S. 997 (1981); *Eastern Produce Co. v. Benson*, 278 F.2d 606, 609 (3d Cir. 1960).

23. Willfulness under the PACA does not require evil intent. Willfulness requires intentional actions or actions undertaken with careless disregard of the statutory

requirements. *See, e.g. Toney v. Glickman*, 101 F.3d 1236, 1241 (8th Cir. 1996); *Finer Foods Sales Co. v. Block*, 708 F.2d 774, 777-78 (D.C. Cir. 1983); *Ocean View Produce, Inc.*, 2009 WL 218027, 68 Agric. Dec. 594, 599 (U.S.D.A. 2009).

24. Cheung Chau Trading, Inc. intentionally, or with careless disregard for the payment requirements in section 2(4) of the PACA, “shifted the risk of nonpayment to sellers of the perishable agricultural commodities.” *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 553 (U.S.D.A. 1998).

25. Cheung Chau Trading Inc.’s violations are “repeated” (repeated means more than one); and Cheung Chau Trading Inc.’s violations are “flagrant”. Whether violations are “flagrant” under the PACA is a function of the number of violations, the amount of money involved, and the time period during which the violations occurred. *Allred’s Produce v. U.S. Dep’t of Agric.*, 178 F.3d 743, 748 (5th Cir.), *cert. denied*, 528 U.S. 1021 (1999); *Five Star Food Distributors, Inc.*, 56 Agric. Dec. 880, 894-95 (U.S.D.A. 1997); *D.W. Produce, Inc.*, 53 Agric. Dec. 1672, 1678 (U.S.D.A. 1994).

Findings of Fact regarding Super Aloha, Ltd., Honolulu, Hawaii

26. Super Aloha, Ltd., Respondent, is or was a limited company organized and existing under the laws of the state of Hawaii. Super Aloha Ltd.’s business and mailing address is or was (b) (6)

27. At all times material herein, Super Aloha, Ltd. was not licensed under the PACA, but was operating subject to the provisions of the PACA, the Perishable Agricultural

Commodities Act, 1930, as amended (7 U.S.C. §§ 499a - 499t), and the regulations issued thereunder, 7 C.F.R. Part 46.

28. At all times material herein, Tony S. Liu, an individual, directed, controlled and managed Super Aloha, Ltd. Tony S. Liu's business and mailing address is (b) (6)

(b) (6) the same as that of Super Aloha, Ltd.

29. Super Aloha, Ltd. failed, during June 5, 2012 through September 7, 2012, to make full payment promptly of the purchase prices, or balances thereof, of \$12,945.54 for fruits and vegetables, in 8 lots, all being perishable agricultural commodities, that Super Aloha, Ltd. purchased, received, and accepted in the course of interstate or foreign commerce from Aloha Products, Honolulu, Hawaii. *See* Appendix D to Complaint.

30. Super Aloha, Ltd. still owed, past due and unpaid, the entire \$12,945.54 to Aloha Products more than two years later. Aloha Products President Paul Kim stated to AMS employee Scott McKenna, Senior Marketing Specialist, on January 14, 2015, that Super Aloha, Ltd. still owed \$12,945.54. *See* Declaration of Scott McKenna, attached to AMS's Additional Information filed July 22, 2015.

31. Super Aloha, Ltd. failed, during April 26, 2013 through May 17, 2013, to make full payment promptly of the purchase prices, or balances thereof, of \$27,339.10 for fruits and vegetables, in 13 lots, all being perishable agricultural commodities, that Super Aloha, Ltd. purchased, received, and accepted in the course of interstate or foreign commerce from Y. Fukunaga Products, Ltd., Honolulu, Hawaii. *See* Appendix D to Complaint.

32. Super Aloha, Ltd. still owed, past due and unpaid, \$29,494.87 to Y. Fukunaga Products, Ltd. more than a year later. President Neal Otani stated to AMS employee Scott McKenna, Senior Marketing Specialist, on January 8, 2015, that Y. Fukunaga Products, Ltd. continues to sell fresh produce to Super Aloha, Ltd. on a cash basis. Secretary Karen Wakuzawa stated to AMS employee Scott McKenna, Senior Marketing Specialist, on January 29, 2015, that Y. Fukunaga Products, Ltd. has received \$1,072.87 toward the debt and is still owed \$29,494.87, which includes charges for non-subject commodities, services and fees which were excluded from the \$27,339.10 amount listed in Appendix D to Complaint). For purposes of this Decision, I will subtract \$1,072.87 from \$27,339.10 and find that \$26,266.23 of the amount past due as of May 17, 2013, remained past due as of January 29, 2015. *See* Declaration of Scott McKenna, attached to AMS's Additional Information filed July 22, 2015.

33. The Complaint was served May 3, 2014. More than 120 days later, Super Aloha, Ltd. still had failed to pay past due amounts (at minimum, the \$12,945.54 still owed to fruit and vegetable seller Aloha Products; plus the \$26,266.23 still owed to fruit and vegetable seller Y. Fukunaga Products, Ltd.). Super Aloha, Ltd.'s inability to assert that it had achieved full compliance with the PACA within 120 days of having been served with the Complaint makes this a "no-pay" case. "Full compliance" requires not only that the respondent have paid all produce sellers in accordance with the PACA, but also, that the respondent have no credit agreements with produce sellers for more than 30 days.

Scamcorp, Inc., d/b/a Goodness Greeness, Scamcorp, Inc., 57 Agric. Dec. 527, 549

(U.S.D.A. 1998); *Carpentino Bros., Inc.*, 46 Agric. Dec. 486, 505-06 (U.S.D.A. 1987), *aff'd*, 851 F.2d 1500 (D.C. Cir. 1988).

34. Super Aloha, Ltd.'s violations of the PACA are willful within the meaning of the Administrative Procedure Act (*see* 5 U.S.C. § 558(c)) because of "the length of time during which the violations occurred and the number and dollar amount of the violative transactions involved." *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 553 (U.S.D.A. 1998); *Allred's Produce v. U.S. Dep't of Agric.*, 178 F.3d 743, 748 (5th Cir.), *cert. denied*, 528 U.S. 1021 (1999); *Cox v. U.S. Dep't of Agric.*, 925 F.2d 1102, 1105 (8th Cir.), *cert. denied*, 502 U.S. 860 (1991); *American Fruit Purveyors, Inc. v. United States*, 630 F.2d 370, 374 (5th Cir. 1980), *cert. denied*, 450 U.S. 997 (1981); *Eastern Produce Co. v. Benson*, 278 F.2d 606, 609 (3d Cir. 1960).

35. Willfulness under the PACA does not require evil intent. Willfulness requires intentional actions or actions undertaken with careless disregard of the statutory requirements. *See, e.g. Toney v. Glickman*, 101 F.3d 1236, 1241 (8th Cir. 1996); *Finer Foods Sales Co. v. Block*, 708 F.2d 774, 777-78 (D.C. Cir. 1983); *Ocean View Produce, Inc.*, 2009 WL 218027, 68 Agric. Dec. 594, 599 (U.S.D.A. 2009).

36. Super Aloha, Ltd. intentionally, or with careless disregard for the payment requirements in section 2(4) of the PACA, "shifted the risk of nonpayment to sellers of the perishable agricultural commodities." *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 553 (U.S.D.A. 1998).

37. Super Aloha, Ltd.'s violations are "repeated" (repeated means more than one); and Super Aloha, Ltd.'s violations are "flagrant". Whether violations are "flagrant" under the PACA is a function of the number of violations, the amount of money involved, and the time period during which the violations occurred. *Allred's Produce v. U.S. Dep't of Agric.*, 178 F.3d 743, 748 (5th Cir.), *cert. denied*, 528 U.S. 1021 (1999); *Five Star Food Distributors, Inc.*, 56 Agric. Dec. 880, 894-95 (U.S.D.A. 1997); *D.W. Produce, Inc.*, 53 Agric. Dec. 1672, 1678 (U.S.D.A. 1994).

Findings of Fact regarding Super Save Market, LLC, Honolulu, Hawaii

38. Super Save Market, LLC, Respondent, is or was a limited liability company organized and existing under the laws of the state of Hawaii. Super Save Market, LLC's business and mailing address is or was (b) (6)

39. At all times material herein, Super Save Market, LLC was not licensed under the PACA, but was operating subject to the provisions of the PACA, the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a - 499t), and the regulations issued thereunder, 7 C.F.R. Part 46.

40. At all times material herein, Tony S. Liu, an individual, directed, controlled and managed Super Save Market, LLC. Tony S. Liu's business and mailing address is (b) (6) (b) (6), the same as that of Super Save Market, LLC.

41. Super Save Market, LLC failed, during July 17, 2012 through August 25, 2012, to make full payment promptly of the purchase prices, or balances thereof, of \$7,845.00 for fruits and vegetables (papaya), in 12 lots, all being perishable agricultural commodities, that

Super Save Market, LLC purchased, received, and accepted in the course of interstate or foreign commerce from A & T Belmes, Keaau, Hawaii. *See* Appendix C to Complaint.

42. Super Save Market, LLC still owed, past due and unpaid, the entire \$7,845.00 to A & T Belmes, Keaau, Hawaii, more than two years later. A & T Belmes owner Teresita Belmes stated to AMS employee Scott McKenna, Senior Marketing Specialist, on January 14, 2015, that Super Save Market, LLC still owed the entire \$7,845.00. *See* Declaration of Scott McKenna, attached to AMS's Additional Information filed July 22, 2015.

43. Super Save Market, LLC failed, during April 24, 2013 through June 6, 2013, to make full payment promptly of the purchase prices, or balances thereof, of \$8,505.80 for fruits and vegetables, in 7 lots, all being perishable agricultural commodities, that Super Save Market, LLC purchased, received, and accepted in the course of interstate or foreign commerce from Choe Produce, Inc., Honolulu, Hawaii. *See* Appendix C to Complaint.

44. Super Save Market, LLC still owed, more than a year later, the entire \$8,505.80 to Choe Produce, Inc. President Young Choe stated to AMS employee Scott McKenna, Senior Marketing Specialist, on January 14, 2015, that Super Save Market, LLC still owed the entire \$8,505.80. *See* Declaration of Scott McKenna, attached to AMS's Additional Information filed July 22, 2015.

45. The Complaint was served May 3, 2014. More than 120 days later, Super Save Market, LLC still had failed to pay past due amounts (at minimum, the \$7,845.00 still owed to fruit and vegetable seller A & T Belmes; plus the \$8,505.80 still owed to fruit and vegetable seller Choe Produce, Inc.). Super Save Market, LLC's inability to assert that it

had achieved full compliance with the PACA within 120 days of having been served with the Complaint makes this a “no-pay” case. “Full compliance” requires not only that the respondent have paid all produce sellers in accordance with the PACA, but also, that the respondent have no credit agreements with produce sellers for more than 30 days.

Scamcorp, Inc., d/b/a Goodness Greeness, 57 Agric. Dec. 527, 549 (U.S.D.A. 1998);

Carpentino Bros., Inc., 46 Agric. Dec. 486, 505-06 (U.S.D.A. 1987), *aff’d*, 851 F.2d 1500 (D.C. Cir. 1988).

46. Super Save Market, LLC’s violations of the PACA are willful within the meaning of the Administrative Procedure Act (*see* 5 U.S.C. § 558(c)) because of “the length of time during which the violations occurred and the number and dollar amount of the violative transactions involved.” *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 553 (U.S.D.A. 1998); *Allred’s Produce v. U.S. Dep’t of Agric.*, 178 F.3d 743, 748 (5th Cir.), *cert. denied*, 528 U.S. 1021 (1999); *Cox v. U.S. Dep’t of Agric.*, 925 F.2d 1102, 1105 (8th Cir.), *cert. denied*, 502 U.S. 860 (1991); *American Fruit Purveyors, Inc. v. United States*, 630 F.2d 370, 374 (5th Cir. 1980), *cert. denied*, 450 U.S. 997 (1981); *Eastern Produce Co. v. Benson*, 278 F.2d 606, 609 (3d Cir. 1960).

47. Willfulness under the PACA does not require evil intent. Willfulness requires intentional actions or actions undertaken with careless disregard of the statutory requirements. *See, e.g. Toney v. Glickman*, 101 F.3d 1236, 1241 (8th Cir. 1996); *Finer Foods Sales Co. v. Block*, 708 F.2d 774, 777-78 (D.C. Cir. 1983); *Ocean View Produce, Inc.*, 2009 WL 218027, 68 Agric. Dec. 594, 599 (U.S.D.A. 2009).

48. Super Save Market, LLC intentionally, or with careless disregard for the payment requirements in section 2(4) of the PACA, “shifted the risk of nonpayment to sellers of the perishable agricultural commodities.” *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 553 (U.S.D.A. 1998).

49. Super Save Market, LLC’s violations are “repeated” (repeated means more than one); and Super Save Market, LLC’s violations are “flagrant”. Whether violations are “flagrant” under the PACA is a function of the number of violations, the amount of money involved, and the time period during which the violations occurred. *Allred’s Produce v. U.S. Dep’t of Agric.*, 178 F.3d 743, 748 (5th Cir.), *cert. denied*, 528 U.S. 1021 (1999); *Five Star Food Distributors, Inc.*, 56 Agric. Dec. 880, 894-95 (U.S.D.A. 1997); *D.W. Produce, Inc.*, 53 Agric. Dec. 1672, 1678 (U.S.D.A. 1994).

Conclusions

50. The Secretary of Agriculture has jurisdiction over the four Respondents, Cheung Chau Trading, Inc., Super Aloha, Ltd., Super Save Market, LLC. and Tony S. Liu, and the subject matter involved herein.

51. The four Respondents, Cheung Chau Trading, Inc., Super Aloha, Ltd., Super Save Market, LLC, and Tony S. Liu, failed to comply with 7 C.F.R. § 46.2(aa) regarding making full payment promptly.

52. Even if the Respondents were eventually to complete payment in full, that would not negate the requirement to pay promptly under the PACA. *See* 7 C.F.R. § 46.2(aa) regarding making full payment promptly, especially 7 C.F.R. § 46.2(aa)(5) and (11).

53. Willfulness is not a prerequisite to the publication of the facts and circumstances of violations of 7 U.S.C. § 499b(4). Nonetheless, the violations detailed above in the Findings of Fact are willful within the meaning of the Administrative Procedure Act (*see* 5 U.S.C. § 558(c)).

54. Each of the four Respondents, Cheung Chau Trading, Inc., Super Aloha, Ltd., Super Save Market, LLC, and Tony S. Liu, willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by failing to make full payment promptly of the purchase prices, or balances thereof, during 2011 through 2013, totaling \$120,931.25 for fruits and vegetables, all being perishable agricultural commodities that Cheung Chau Trading, Inc., Super Aloha, Ltd., Super Save Market, LLC, and Tony S. Liu purchased, received, and accepted in the course of interstate or foreign commerce, comprised of:

\$ 64,295.81 not paid in full promptly to Aloun Farms, Inc., Kapolei, Hawaii
 \$ 12,945.54 not paid in full promptly to Aloha Products, Honolulu, Hawaii
 \$ 27,339.10 not paid in full promptly to Y. Fukunaga Products, Ltd., Honolulu, Hawaii
 \$ 7,845.00 not paid in full promptly to A & T Belmes, Keaau, Hawaii
 \$ 8,505.80 not paid in full promptly to Choe Produce, Inc., Honolulu, Hawaii

\$120,931.25
 =====

55. Tony S. Liu, day-to-day during 2011 through 2013, directed, controlled, and managed Cheung Chau Trading, Inc., Super Aloha, Ltd., and Super Save Market, LLC, including the timing and amount of payments to suppliers of perishable agricultural commodities such as Aloun Farms, Inc., Kapolei, Hawaii; Aloha Products, Honolulu, Hawaii; Y. Fukunaga Products, Ltd., Honolulu, Hawaii; A & T Belmes, Keaau, Hawaii; and Choe Produce, Inc., Honolulu, Hawaii.

56. More than 120 days after the Complaint was served, the amounts still owed and unpaid in January 2015 by the four Respondents, Cheung Chau Trading, Inc., Super Aloha, Ltd., Super Save Market, LLC, and Tony S. Liu, for the purchases shown in paragraph 54, totaled \$111,529.57, comprised of:

\$ 55,967.00 still owed in January 2015 to Aloun Farms, Inc., Kapolei, Hawaii
\$ 12,945.54 (no change) still owed in January 2015 to Aloha Products, Honolulu, Hawaii
\$ 26,266.23 still owed in January 2015 to Y. Fukunaga Products, Ltd., Honolulu, Hawaii
\$ 7,845.00 (no change) still owed in January 2015 to A & T Belmes, Keaau, Hawaii
\$ 8,505.80 (no change) still owed in January 2015 to Choe Produce, Inc., Honolulu, HI

\$111,529.57

Order

57. The Respondents, Cheung Chau Trading, Inc., Super Aloha, Ltd., Super Save Market, LLC, and Tony S. Liu, are each found to have committed willful, flagrant, and repeated violations of section 2(4) of the PACA, 7 U.S.C. § 499b(4). The facts and circumstances of the violations shall be published pursuant to section 8(a) of the PACA, 7 U.S.C. § 499h(a).

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

59. Any employment sanctions attendant to this Decision and Order pursuant to section 8(b) of the PACA, 7 U.S.C. § 499h(b), shall take effect on the 11th day after this Decision and Order becomes final. See next page for when this Decision and Order becomes final.

Finality

60. This Decision and Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties (to each of the four Respondents separately by certified mail; and to AMS's counsel by in-person delivery to an Office of the General Counsel representative).

Done at Washington, D.C.
this 30th day of July 2015



Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
Stop 9203 South Building Room 1031
1400 Independence Ave SW
Washington, DC 20250-9203
202-720-4443
FAX 202-720-9776
OALJHearingClerks@ocio.usda.gov

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

.....
SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER
.....
VARIOUS STATUTES

.....
§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145