

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Bella Fresh Houston LLC,) PACA-D Docket No. 20-J-0072
)
Respondent.)

REC'D - USDA/OALC/OHIC
2020 NOV 17 AM 11:13

DECISION AND ORDER WITHOUT HEARING BY REASON OF DEFAULT

Appearance:

Christopher P. Young, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service ("AMS").

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a *et seq.*) ("PACA"); the regulations promulgated thereunder (7 C.F.R. Part 46) ("Regulations"); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 *et seq.*) ("Rules of Practice").

The Complainant, Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture ("AMS"), initiated this proceeding against Respondent Bella Fresh Houston LLC by filing a complaint on March 12, 2020. The Complaint alleged that, during the period December 2017 through May 2019, on or about the dates and in the transactions set forth in Appendix A attached to the Complaint and incorporated by reference, failed to make full payment promptly to ten (10) sellers for 453 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$3,154,711.89 in violation of section 2(4) of the PACA

(7 U.S.C. § 499b(4)). Complainant requested that an Administrative Law Judge find that Respondent has willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) and order the revocation of Respondent's PACA license pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

Respondent was duly served with a copy of the Complaint and did not file an answer within the twenty-day period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136).¹

On October 19, 2020, I issued an order directing the parties to show cause ("Show Cause Order"), not later than twenty days after that date, why default should not be entered against Respondent. Both parties failed to respond to the Show Cause Order.²

Failure to file a timely answer or failure to deny or otherwise respond to allegations in the Complaint shall be deemed, for purposes of this proceeding, an admission of the allegations in the Complaint, unless the parties have agreed to a consent decision. 7 C.F.R. § 1.136(c). Other than a consent decision, the Rules of Practice do not provide for exceptions to the regulatory consequences of an untimely filed answer where, as in the present case, no meritorious objections have been filed.³

As Respondent failed to answer the Complaint this Decision and Order is issued without

¹ United States Postal Service records reflect that the Complaint was sent to Respondent via certified mail on and delivered on March 16, 2020 and was returned to the Hearing Clerk's Office due to insufficient address. The Complaint was re-sent to Respondent via certified mail on May 15, 2020 and delivered on May 18, 2020. Respondent had twenty (20) days from the date of service to file a response. 7 C.F.R. § 1.136(a). Weekends and federal holidays shall be included in the count; however, if the due date falls on a Saturday, Sunday, or federal holiday, the last day for timely filing shall be the following workday. 7 C.F.R. § 1.147(h). In this case, Respondent's answer was due on or before June 8, 2020. Respondent has not filed an answer in this matter.

² The Show Cause Order was issued on October 29, 2020; therefore, the parties were required to respond on or before November 9, 2020.

³ 7 C.F.R. § 1.139.

further procedure 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 limited liability company organized and existing under the laws of the State of Texas. Respondent's business and mailing address is 6920 Brasada Drive, Suite 400, Houston, Texas 77085.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. PACA license number 2012 1515 was issued to Respondent on September 24, 2012. The license is currently active and due to be renewed on September 24, 2020.
3. Respondent, during the period December 2017 through May 2019, on or about the dates and in the transactions set forth in Appendix A attached to the Complaint and incorporated by reference, failed to make full payment promptly to ten (10) sellers for 453 lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$3,154,711.89.

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent's failure to pay the full purchase price with respect to the transactions referenced in Finding of Fact, paragraph 3, above and set forth in Appendix A of the Complaint, constitutes willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), for which the below Order is issued.


ORDER

1. A finding is made that Respondent Bella Fresh Houston LLC has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).
2. Respondent Bella Fresh Houston's PACA license number 2012 1515 is hereby revoked pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)).

This Decision and Order shall be final and effective without further proceedings thirty-five (35) days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (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 of this Decision and Order shall be served by the Hearing Clerk upon each of the parties, with courtesy copies provided via email where available.

Done at Washington, D.C.,
this 17th day of November 2020



Channing D. Strother
Chief Administrative Law Judge

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