

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: )  
 )  
Old West Export, Inc., ) PACA-D Docket No. 20-J-0114  
 )  
Respondent. )

REC'D - USDA/CALJ/OHC  
2020 NOV 24 PM 6:07

**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, 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 through 1.151) ("Rules of Practice").

The Complainant, Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture, initiated this proceeding against Respondent Old West Export, Inc. by filing a complaint on April 8, 2020. The Complaint alleged that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) during the period March 2018 through November 2018, by failing to make full payment promptly to five (5) sellers in the total amount of \$1,059,875.65 for sixty-five (65) lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate commerce. The Complaint requested that an Administrative Law Judge find that Respondent has committed

willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and order that Respondent's PACA violations be published pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)). *Scamcorp, Inc., d/b/a Goodness Greeness*, 57 Agric. Dec. 527, 547-549 (1998).

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).<sup>1</sup>

On October 9, 2020, Complainant filed a Motion for Decision Without Hearing by Reason of Default ("Motion for Default") and proposed Decision Without Hearing by Reason of Default ("Proposed Decision"). Respondent has not filed any objections to Complainant's Motion for Default or Proposed Decision.<sup>2</sup>

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

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<sup>1</sup> United States Postal Service records reflect that the Complaint was sent to Respondent on April 9, 2020 via certified mail and returned marked "Unclaimed" on June 10, 2020. In Accordance with 7 C.F.R. § 1.147(c)(1), the Complaint was re-mailed to Respondent via regular mail on June 17, 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 work day. 7 C.F.R. § 1.147(h). In this case, Respondent's answer was due on or before July 7, 2020. Respondent has not filed an answer in this matter.

<sup>2</sup> United States Postal Service records reflect that the Motion for Default and Proposed Decision were sent to Respondent via certified mail and delivered on October 31, 2020. Respondent had twenty (20) days from the date of service to file objections thereto. 7 C.F.R. § 1.139. Weekends and federal holidays shall not 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 work day. 7 C.F.R. § 1.147(h). In this case, Respondent's objections were due by November 20, 2020. Respondent has not filed any objections.

consequences of an untimely filed answer where, as in the present case, no meritorious objections have been filed.<sup>3</sup>

As Respondent failed to answer the Complaint, and upon Complainant's motion for the issuance of a decision without hearing by reason of default, this Decision and Order is issued without 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 or was a corporation organized and existing under the laws of the state of California and its mailing address is 5346 W Sweet Court, Visalia, California 93292.
2. At all times material herein, Respondent was licensed and/or operating subject to the provisions of the PACA. License number 20080138 was issued to Respondent on October 29, 2007. This license terminated 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. Respondent, during the period March 2018 through November 2018, on or about the dates and in the transactions set forth in Appendix A to the Complaint and incorporated by reference, failed to make full payment promptly to five (5) sellers for sixty-five (65) lots of perishable agricultural commodities which Respondent purchased, received, and accepted in interstate and foreign commerce, in the total amount of \$1,059,875.65.

### **Conclusions**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent's failure to pay promptly with respect to the transactions referenced in Finding of Facts No. 3 above, and set forth in Appendix A to the Complaint, constitutes willful,

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<sup>3</sup> 7 C.F.R. § 1.139; *see supra* note 2.

flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), for which the Order below is issued.

3. The total unpaid balance due to produce sellers represents more than a *de minimis* amount, thereby obviating the need for a hearing in this matter.<sup>4</sup>
4. As Respondent's PACA license terminated prior to the institution of this proceeding, the appropriate sanction is publication of the facts and circumstances of Respondent's violations.<sup>5</sup>

### ORDER

1. Complainant's Motion for Decision Without Hearing by Reason of Default is GRANTED.
2. A finding is made that Respondent Old West Export, Inc. has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).
3. The facts and circumstances of Respondent Old West Export, Inc.'s PACA violations shall be published 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.

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<sup>4</sup> See *The Square Group, LLC*, 75 Agric. Dec. 689, 695 (U.S.D.A. 2016); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984) (Ruling on Certified Question).

<sup>5</sup> See *Baiardi Chain Food Corp.*, 64 Agric. Dec. 1822, 1832 (U.S.D.A. 2005), *petition for review denied*, 482 F.3d 238 (3d Cir. 2007); *Scamcorp, Inc.*, 57 Agric. Dec. 527, 571 n.23 (U.S.D.A. 1998); *Hogan Distrib., Inc.*, 55 Agric. Dec. 622, 633 (U.S.D.A. 1996).

Done at Washington, D.C.,  
this 24th day of November 2020



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Channing D. Strother  
Chief Administrative Law Judge

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