

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	PACA Docket No. D-16-0022
)	
Ricardo Bombella,)	
)	
Respondent)	Consent Decision and Order

This is an administrative disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended, (7 U.S.C. §499a *et seq.*; PACA), and the Regulations issued thereunder (7 C.F.R. Part 46; Regulations). It was initiated by a Complaint filed against Respondent on November 6, 2015 by the Associate Deputy Administrator, Specialty Crops Program, Agricultural Marketing Service, pursuant to 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 Complaint alleged that Respondent failed to comply with his PACA employment sanction, which began on January 27, 2012, by being employed by Sun Produce, a PACA licensee, between at least April 2012 through April 2014, during the period in which employment restrictions were in effect under Section 8(b) of the PACA.

On November 17, 2015, Respondent filed a timely answer denying the allegations of the Complaint and requesting an oral hearing. Complainant and Respondent now consent and agree, for the purpose of settling this matter, to the entry of a Decision Without Hearing by Reason of Consent, without oral hearing or further procedure, pursuant to section 1.138 of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary governing this proceeding (7 C.F.R. §1.138).

Respondent admits the jurisdictional allegations set forth in paragraph II of the disciplinary Complaint, but maintains that he was not unlawfully employed by Sun Produce. In order to settle this proceeding, the parties agree to the entry of the following Decision and Order which may be issued without further procedure or hearing.

Pertinent Statutory Provisions

Section 8(b) of the PACA (7 U.S.C. § 499h(b)) provides:

Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person –

* * * *

(1) whose license has been revoked or is currently suspended by order of the Secretary;

(2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or

(3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 7(c) (3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 7(c).

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 2, if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this Act and that the licensee will pay all reparation awards, subject to its right of appeal under section 7(c), which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section. The Secretary may extend the period of employment sanction as to a responsibly connected person for an additional one-year period upon the determination that the person has been unlawfully employed as provided in this subsection.

Section 1 of the PACA (7 U.S.C. § 499a(10)) provides:

The terms “employ” and “employment” mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment.

Findings of Fact

1. Respondent is an individual, whose mailing address, upon information and belief, is a home address, and will not be stated in this Consent Order to protect Respondent’s privacy. The address has been provided to the Hearing Clerk’s Office, United States Department of Agriculture, for the purposes of service of this Consent Order.

2. On December 23, 2011, the PACA Branch of the Agricultural Marketing Service made an initial determination that Respondent was responsibly connected to Alliance Distribution Center, LLC. (Alliance), when it failed to pay a default reparation award, issued on that same date. Respondent was informed of both the determination and the default reparation award by letter dated December 23, 2011. Respondent was further informed that the default reparation award, if not paid, petitioned for reconsideration, or appealed, would become final on January 27, 2012, and Alliance’s PACA license would be automatically suspended on that date.

3. Respondent did not contest the December 23, 2011 determination, and Alliance did not pay or satisfy the default reparation award. Therefore, the December 23, 2011 responsibly connected determination became the PACA Branch’s final determination on January 27, 2012, Alliance’s PACA license was suspended, and Respondent’s employment sanctions and restrictions under section 8(b) of the PACA (7 U.S.C. § 499h(b)) began on January 27, 2012, the date that the reparation order became final.

4. In the December 23, 2011 letter, the PACA Branch of the Agricultural Marketing Service notified Respondent that once he was placed under employment and licensing

restrictions, he could not be employed by or affiliated with another PACA licensee, in any capacity, for a period of two years without the approval of the Secretary of Agriculture and the posting of a suitable surety bond.¹

5. Three subsequent default reparation awards against Alliance and involving Respondent were issued and became final between March 14, 2012 and April 13, 2012.

6. Sun Produce Specialties, LLC (Sun Produce), is a limited liability company whose business and mailing address is listed with the PACA Branch as 811 E. Jackson Street, Phoenix, Arizona 85034-2212. At all times material herein, Sun Produce was licensed under the provisions of the PACA. License number 2008-0424 was issued to Sun Produce on February 4, 2008, and this license is currently active.

7. Respondent was employed by or affiliated with Sun Produce, as defined by the PACA, from at least April of 2012 through April of 2014.

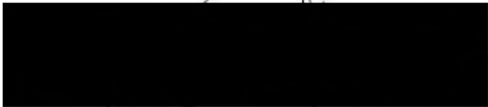
Conclusions


Respondent failed to comply with the PACA employment sanction, which began on January 27, 2012, by being employed by Sun Produce, a PACA licensee, between at least April 2012 through April 2014, during the period in which employment restrictions were in effect under section 8(b) of the PACA.

¹ Beginning January 27, 2012, Respondent was prohibited, *inter alia*, from being employed by or affiliated with a PACA licensee in any capacity for a period of two years, or until January 27, 2014. Respondent was *eligible* to be employed after one year from the January 27, 2012 date the employment sanctions went into effect; however, provided only that Respondent sought and obtained the approval of AMS, and posted a surety bond in form and amount satisfactory to AMS. (7 U.S.C. § 499h(b)). No such approval was sought by Respondent or Sun Produce.

Order


Respondent violated section 8(b) of the PACA (7 U.S.C. § 499h(b)) by failing to comply with employment restrictions imposed under section 8(b) of the Act. Pursuant to section 8(b) of the PACA (7 U.S.C. § 499h(b)), Respondent's employment restrictions are hereby extended for an additional one year from the date of this Order. Those restrictions apply to any employment or affiliation with a PACA licensee, and to any employment or affiliation with any person (including self-employment or ownership) that operates subject to the PACA, as defined in section 1(b) of the Act (7 U.S.C. § 499a) and section 46.2 of the regulations attendant to the Act (7 C.F.R § 46.2).


Ricardo Bombella
Respondent


Christopher Young
Attorney for Complainant

Issued at Washington, D.C.

This 6 day of April, 2016


Jill S. Clifton
Administrative Law Judge