

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	}	
	}	FMIA Docket No. 09-0074
	}	PPIA Docket No. 09-0074
	}	
MGF, Inc.	}	
and	}	
Douglas Mariani	}	
	}	
	}	Consent Decision and Order
Respondent	}	
	}	

This is a proceeding under the Federal Meat Inspection Act, as amended (21 U.S.C. §§ 601 et seq.) ("FMIA"), the Poultry Products Inspection Act, as amended (21 U.S.C. §§ 451 et seq.) ("PPIA"), and the applicable Rules of Practice (7 C.F.R. §§ 1.130 et seq. and 9 C.F.R. §§ 500.1 et seq.), to deny Federal inspection services to MGF, Inc., and Mr. Douglas J. Mariani, hereinafter referred to jointly as Respondents. This proceeding was commenced by a complaint filed herein by the Administrator of the Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA), which is responsible for the administration of Federal inspection services for both meat and poultry. The parties have agreed that this proceeding should be terminated by entry of the Consent Decision set forth below and have agreed to the following stipulations:

1. For the purpose of this stipulation and the provisions of this Consent Decision only, MGF, Inc., hereinafter Respondent Corporation, and Mr. Douglas J. Mariani, hereinafter Respondent, admit all jurisdictional allegations of the complaint and waives:

(a) Any further procedural steps except as specified herein;

(b) Any requirement that the final decision in this proceeding contain any findings and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or bases thereof; and

(c) All rights to seek judicial review or to otherwise challenge or contest the validity of this decision.

2. This Stipulation and Consent Decision is for settlement purposes only and does not otherwise constitute an admission or denial by Respondents that they violated the regulations or statutes involved.

3. Respondents waive any action against the USDA under the Equal Access to Justice Act of 1980 (5 U.S.C. §§ 504 et seq.) for fees and other expenses incurred by Respondents in connection with this proceeding.

#### **Findings of Fact**

1. MGF, Inc., Respondent Corporation, is a corporation that wishes to engage in the processing of meat, meat products, poultry, and poultry products in the establishment located at 135 Main Street, Pittsburgh, Pennsylvania 16024.

2. Respondents, on or about July 5, 2007, submitted an "Application for Federal Meat, Poultry or Import Inspection" requesting Federal inspection services under the FMIA and PPIA, at the place of business in Pittsburgh, Pennsylvania.

3. Respondent Douglas J. Mariani is identified in said application as President of MGF, Inc. and is a holder of 10% or more voting stock within the company.

4. On September 21, 2000, in the United States District Court for the Western District of Pennsylvania, Pittsburgh, Pennsylvania, Respondent Mariani pled guilty and was sentenced for

violating 21 U.S.C. § 846, a felony count for conspiracy to distribute and possess with the intent to distribute in excess of five kilograms of cocaine.

### **Conclusion**

Because the parties have agreed to the provisions set forth in the following Stipulation and Consent Decision in disposition of this proceeding, the following Order will be issued.

### **Order**

Federal meat inspection services under Title I of the FMIA, and Federal poultry inspection services under the PPIA are denied to Respondent Corporation, its owners, officers, directors, partners, affiliates, successors and assigns, directly or through any corporate or other device, for a period of two (2) years beginning on the effective date of this Order and upon issuance of a conditional grant of inspection. This denial of inspection shall be held in abeyance, and inspection shall be provided to Respondent Corporation for so long as the conditions set forth below, in addition to all other requirements of applicable inspection statutes and regulations are met:

1. Respondent Corporation, Douglas J. Mariani, or any other responsibly connected individual, or any of its officers, partners, employees, agents or affiliates shall not:

(a) violate any section of the FMIA, PPIA, or regulations promulgated thereunder, or state or local statute involving the preparation, sale, transportation, or attempted distribution of any adulterated or misbranded meat or poultry product;

(b) commit any felony or other criminal act involving the sale and distribution of unwholesome, adulterated or misbranded product;

(c) willfully make or cause to be made any false entry into any accounts, records, or memoranda kept by Respondents in compliance with Federal or State statutes or regulations; fail

to make true and correct entries in such accounts, records or memoranda, or fail to keep such accounts that fully disclose all transactions in Respondents' business; or

(d) assault, intimidate, threaten or interfere with any program employee in the performance of his or her official duties under the FMIA or PPIA.

2. Respondents shall not knowingly hire or add any new individual who has been convicted, in any Federal or State court, of any felony, or more than one misdemeanor based upon the acquiring, handling, or distributing of unwholesome, mislabeled or deceptively packaged food, or based upon fraud in connection with transactions in food. To the extent permitted by state and federal law, Respondents shall immediately terminate its connection with any such individual when that individual's conviction becomes known to Respondents.

Notwithstanding the above, Douglas J. Mariani may continue working at the Respondent Corporation in his current capacity.

3. Respondents shall implement and maintain Sanitation Standard Operating Procedures (SSOP) and a Hazard Analysis and Critical Control Point (HAACP) system in accordance with regulatory requirements specified in Title 9, Code of Federal Regulations, Part 416 and 417, respectively.

4. Respondents shall maintain full, complete and accurate written records of all business activities applicable to the FMIA and the PPIA, including but not limited to SSOP and HAACP records, and will make these records available upon request to any authorized representative of the Secretary of Agriculture of the United States (Secretary).

5. Within ninety (90) calendar days from the issuance of a conditional grant of inspection, Douglas J. Mariani shall participate in a training program(s) or educational course(s) encompassing "ethics" in business practices and compliance with applicable state and Federal

statutes and meat and poultry regulations. Prior to participating in the program(s) or course(s) Respondent Mariani shall submit a description of such training or course for review and concurrence by the Director, Office of Program Evaluation, Enforcement and Review (Director, hereinafter). Respondent shall maintain records documenting the completion of such training. These records shall be made available upon request to any authorized representative of the Secretary. If Respondent cannot complete the program or course within the time designated in this paragraph, he may request an extension of time from the Director.

6. Within sixty (60) calendar days from the issuance of a conditional grant of inspection, Respondent shall develop and submit for review and concurrence to the Director a corporate code or policy statement of business conduct ethics to ensure food safety and regulatory compliance with business practices (Corporate Code) applicable to all business entities and individuals within or employed by respondent. The Corporate Code shall include; (a) a corporate policy statement addressing business ethics and public trust; (b) a corporate statement of commitment to comply with all applicable laws and regulations in the conduct of business; (c) guidelines for employees to follow with respect to food safety and ethics; and (d) a statement setting forth corrective and preventative measures to preclude any acts of assault, intimidation, or interference of any program employee. The Corporate code shall be implemented and permanently displayed in a prominent location in Respondents' establishment. The Corporate Code shall be discussed with all current and future employees.

7. On or before the expiration of sixty (60) calendar days from the effective date of a conditional grant of inspection, Respondents shall implement and maintain an effective compliance program to ensure that all inspected meat and/or poultry products do not become

adulterated, contaminated or misbranded. This compliance program shall include provisions to ensure that:

(a) any carcasses of slaughtered livestock are wholesome, free of any contamination, adulteration, and bear legible marks of Federal inspection in accordance with the requirements of 9 C.F.R. § 318;

(b) all meat and/or poultry products are processed in accordance with product specifications and formulations in 9 C.F.R. § 318.6;

(c) all meat and/or poultry products produced at Respondents' establishment do not have any undeclared substance of any kind, are correctly labeled, and bear full and accurate labeling in accordance with the requirements of 9 C.F.R. § 301.2; and

(d) recordkeeping of product formulations for meat and/or poultry products produced at Respondents' establishment are in accordance with the requirements of 9 C.F.R. §§ 318.6 and 381.118.

Respondents shall develop and submit their proposed compliance program to the Director or his or her designee for review. Respondents shall designate an employee and an alternate to be responsible for oversight of all aspects of the compliance program at all times during production. Such employee or alternate shall have full authority to hold up production, stop production, remove product from production, or take positive control of any products manufactured or stored at the facility which are or are believed to be adulterated or misbranded. The designated employee or alternate must be present at all times when operations requiring Federal inspection are conducted. The parties shall make every effort to ensure that Respondents' compliance program is reviewed and implemented in an expeditious manner.

8. Respondent shall fully and completely cooperate with any FSIS investigation inquiry, review or examination of Respondent or Respondents' compliance with the FMIA, PPIA or this Order.

9. Respondent shall provide an annual report to the Director, EED, summarizing Respondents' compliance with this Order, and FSIS statutory and regulatory requirements.

10. The provisions set forth in Paragraphs 1 through 9 of this Order shall be applicable for a period of two (2) years commencing with the issuance of this Order and a conditional grant of inspection.

11. The Administrator, FSIS, shall have the right to summarily withdraw inspection services upon a determination by the Administrator, or his or her designee, that one or more conditions set forth in paragraphs 1 through 9 of this Order have been violated. It is acknowledged that Respondents retain the right to request an expedited hearing pursuant to the Rules of Practice, 9 C.F.R. Part 500, concerning any violation alleged as the basis for a withdrawal of inspection services. This does not affect complainant's right to suspend official operations in accordance with Rules of Practice, 9 C.F.R. Part 500.

12. Nothing in this Order shall preclude the referral of any such violation to the Department of Justice for possible criminal or civil proceedings, or preclude the Administrator from taking other appropriate administrative action under the FMIA, PPIA, and the regulations promulgated thereunder.

13. If any provision of this Order is declared invalid, such declaration shall not affect the validity of any other provision herein.

The provisions of this Order shall become effective when signed by the Administrative Law Judge and upon issuance of a conditional grant of federal inspection service.

[Redacted signature]

Douglas J. Mariani, President  
Respondent

[Redacted signature]

Scott C. Safian, Director  
Evaluation and Enforcement Division  
Office of Program Evaluation,  
Enforcement and Review

[Redacted signature]

Douglas J. Mariani, President  
Respondent, MGF, Inc.

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Lauren Axley, Esq.  
Attorney for Complainant  
United States Department of Agriculture  
Office of the General Counsel

Issued this 26<sup>th</sup> day of March 2009  
in Washington, D.C.

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ADMINISTRATIVE LAW JUDGE