

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In Re:)
)
)
DeHaven's Butchering and Country Market) FMIA Docket No. 15-0076
and)
Carl DeHaven,)
)
)
Respondents) Consent Decision and Order
)

This is a proceeding under the Federal Meat Inspection Act, as amended (21 U.S.C. §§ 601 et seq.) ("FMIA"), and the applicable rules of practice (7 C. F.R. §§ 1.130 et seq. and 9 C.F.R. §§ 500.1 et seq.) to withdraw Federal inspection service from DeHaven's Butchering and Country Market and Carl DeHaven, hereinafter referred to jointly as Respondents. This proceeding was commenced by a complaint filed by the Administrator of the Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA) on 2/13/, 2015. The parties have agreed that this proceeding should be terminated by entry of the Consent Decision and Order set forth below pursuant to the Consent Decision provisions of the Rules of Practice (7 C.F.R. § 1.138).

Respondents admit the allegations in the Complaint and specifically admit that the Secretary has jurisdiction in this matter. Respondents waive oral hearing and further procedure, and waive any action against the complainant under the Equal Access to Justice Act of 1980 (5 U.S.C. section 504 et seq.), and waive any other action against the USDA and its employees in connection with the facts and events that gave rise to these proceedings. Respondents consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

Complainant agrees to the entry of this decision.

Findings of Fact

(1) DeHaven's Butchering and Country Market, herein referred to individually as Respondent Business, is now and at all times material herein was, a corporation located at 468 Whitehall Road, Winchester, Virginia 22603.

(2) Respondent Carl DeHaven, is now, and was at all times material herein, a meat processing plant receiving federal meat inspection services under section 401 of the FMIA, FSIS Establishment Number 34103, at its place of business in Winchester, Virginia.

(3) Respondent Carl DeHaven is now, and was at all times material herein, Owner of Respondent Business and is responsibly connected to, DeHaven's Butchering and Country Market, LLC.

(4) On January 3, 2014, in the Frederick County Circuit Court of the Commonwealth of Virginia, Respondent DeHaven and owner of Respondent Business, pleaded guilty to two misdemeanor counts of offering for sale misbranded meat, in violation of Section 3.2 – 5407(A)(2) of the Code of Virginia.

Conclusion

The Respondent having admitted the jurisdictional facts and parties having agreed to the entry of this decision, this decision will be entered.

Order

Federal meat inspection services under the FMIA are withdrawn from Respondent Carl DeHaven, and Respondent DeHaven's Butchering and Country Market, including its owners, officers, directors, partners, affiliates, successors and assigns, directly or through any business or other device, for a period of three (3) years beginning on the effective date of this order; Provided, however, the withdrawal of inspection services shall be held in abeyance, and conditional Federal inspection services

shall continue to be provided to Respondents for so long as the conditions set forth below, in additions to all other statutory and regulatory requirements for applicable inspection services, are met.

Compliance Provisions

1. Respondents shall implement and maintain Sanitation Performance Standards (SPS), 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.

Training and Corporate Code of Conduct

2. Within sixty (60) calendar days from the issuance of this Order, Respondent Carl DeHaven shall participate in and successfully complete a training program or educational course encompassing food safety, sanitation, the seven HACCP Principles as identified in 9 C.F.R. 417.7 (b), and compliance with applicable Federal and State statutes. Respondents shall maintain for the duration of the Order records documenting the completion of such training and shall make these records available upon request to any authorized representative of the Secretary.

3. Within ninety (90) calendar days from the issuance of this Order, Respondents shall develop and submit for review and concurrence of the Director, Evaluation Litigation Division, (ELD) a business or code policy statement of business conduct and ethics to ensure food safety and regulatory compliance in business practices ("Business Code") applicable to all business entities and individuals within or employed by Respondent. The Business Code, at a minimum, shall include:

- (a) a statement of company policy addressing business ethics and the public trust;
- (b) a statement of Respondents' commitment to comply with all applicable Federal and state food safety and other laws in the conduct of their business;

- (c) guidelines for Respondents' employees to follow with respect to food safety and ethics issues; and
- (d) assurances to preclude any acts of intimidation, assault, or interference of USDA program employees.

The Business Code shall be permanently displayed in a prominent location in Respondents' establishment, and shall be discussed with all current and new employees.

Company Reporting to FSIS

4. Respondent shall provide a written report to the Director, ELD regarding Respondents' compliance with all terms and conditions of this Order. Such report shall also include any information regarding regulatory control actions, withholding actions, or suspension actions taken by FSIS personnel. The report shall be submitted to the Director, ELD every six months for the duration of the Order.

Recordkeeping Provisions

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

General Provisions

6. Respondent Carl DeHaven, or any other responsibly connected individual, or any of its owners, officers directors, partners, employees, agents, affiliates, successors, and assigns shall not:
- (a) violate any section of the FMIA, Poultry Products Inspection Act (21 U.S. C. §§ 451 et seq.) ("PPIA") or regulations promulgated there under, or state or local statute involving the slaughter, preparation, sale, transportation, or attempted distribution of any adulterated or misbranded meat or poultry product;

- (b) commit any felony or fraudulent criminal act, or any other criminal act involving the sale and distribution of unwholesome, adulterated or misbranded products;
- (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 Respondent's business;
- (d) assault, intimidate, threaten or interfere with any program employee in the performance of his or her official duties under the FMIA or PPIA; or
- (e) conduct any operations requiring Federal inspection outside the official approved hours without obtaining prior approval from FSIS.

7. Respondents shall not knowingly hire or employ any new individual who has been convicted, in any Federal, state, or territorial 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 their connection with such individual when that individual's conviction becomes known to Respondents.

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

Enforcement Provisions

9. The Administrator, FSIS, shall have the right to summarily withdraw inspection services upon a determination by the Director, ELD or his or her designee, that one or more conditions set forth in this Order in paragraphs one (1) through eight (8) have been violated.

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

11. The Provisions set forth in this Order shall be applicable for a period of three years.
12. If any provision of this Order is declared invalid, such declaration shall not affect the validity of any other provision herein.
13. This Order shall become effective upon issuance by the Administrative Law Judge.


Carl DeHaven
Respondent
on behalf of
DeHaven's Butchering & Country Market


Scott C. Safian, Director
Enforcement and Litigation Division
Food Safety and Inspection Service
U.S. Department of Agriculture


Lisa Jabaily
Attorney for Complainant
United States Department of Agriculture
Office of the General Counsel

Issued this 19th day of February 2014
in Washington, D.C.


ADMINISTRATIVE LAW JUDGE

JANICE K. BULLARD