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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) OFPA Docket No. 16-0001
)
Yorgo Foods, Inc.,)
)
Respondent.) Consent Decision
) and Order

This proceeding was instituted under the Organic Foods Production Act of 1990, as amended, 7 U.S.C. §§ 6501-6522 (OFPA), alleging that the Respondent, Yorgo Foods, Inc., willfully violated the National Organic Program Regulations issued thereunder, 7 C.F.R. §§ 205.1-205.699 (NOP Regulations). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

The Respondent admits the jurisdictional allegations as set forth herein and specifically admits that the Secretary has jurisdiction in this matter, neither admits nor denies the remaining allegations of the complaint, waives oral hearing and further procedure, and consents and agrees, for the purpose of settling this proceeding, and for such purposes only, to the entry of this decision.

The Complainant agrees to the entry of this decision.

Conclusions

1. Yorgo Foods, Inc., is a corporation whose mailing address is 231 Woodland Avenue, Manchester, New Hampshire 03109.
2. Between November 14, 2002, and May 1, 2013, the Respondent was engaged in business as a certified organic operation, as defined in the OFPA, pursuant to an organic certificate issued by Baystate Organic Certifiers (Baystate), a certifying agent accredited by the United States Department of Agriculture.
3. On March 6, 2013, Baystate conducted an inspection of the Respondent and found several noncompliances.
4. On May 1, 2013, Baystate issued a Combined Notice of Noncompliance and Proposed Suspension to the Respondent for the alleged violations found on March 6, 2013.
5. On June 21, 2013, the Respondent submitted a response to the May 1, 2013, Notice of Noncompliance and Proposed Suspension.
6. On August 13, 2013, Baystate issued a Notice of Suspension of Organic Certification to the Respondent, based on the May 1, 2013, Notice of Noncompliance and Proposed Suspension which became effective immediately.
7. On October 2, 2013, Baystate submitted a Request for Reinstatement on behalf of the Respondent.
8. On November 6, 2013, the NOP issued a Notice of Denial of Reinstatement to the Respondent based on an inspection conducted by Baystate on September 25, 2013.
9. On November 19, 2013, the Respondent filed a timely appeal with regard to the

November 6, 2013, Notice of Denial of Reinstatement with the AMS Administrator.

10. On February 10, 2014, the Respondent signed a Settlement Agreement with the NOP to resolve the November 19, 2013 appeal. NOP agreed to shorten the suspension to six months and Respondent agreed to withdraw its appeals and waive further procedures and to remain suspended until reinstated.

11. In March 2014, the Respondent applied for reinstatement with Baystate a second time. While considering this request, Baystate determined that the Respondent was continuing to sell agricultural products as organic and provided evidence of these sales in the form of receipts and photographs to the NOP.

12. On April 8, 2014, NOP sent a letter the Respondent stating that it had broken the settlement agreement, and was violating the USDA organic regulations by selling as organic while suspended.

13. On May 16, 2014, the Respondent signed a second Settlement Agreement with the NOP. Respondent agreed to waive its right to appeal; to pay a reduced civil penalty of \$33,000; and to cease selling nonorganic agricultural products labeled as organic.

14. On June 12, 2014, the Respondent submitted a Request for Reinstatement to the Administrator.

15. On June 13, 2014, Baystate sent a letter to the NOP recommending against the reinstatement of the Respondent.

16. On July 3, 2014, NOP issued a Notice of Denial of Reinstatement to the Respondent.

17. On July 30, 2014, the Respondent filed a timely appeal with the AMS

Administrator in regard to the July 3, 2014, Notice of Denial of Reinstatement.

18. On December 5, 2014, the AMS Administrator issued a decision denying the Respondent's July 30, 2014, appeal, citing evidence that between May 20 and July 18, 2014, the Respondent continued to sell agricultural products as organic while suspended, in willful violation of the USDA.

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

Order

1. Respondent, its agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the OFPA and the NOP Regulations issued thereunder.


2. Respondent's organic certification is suspended for a period of three years. This three-year suspension shall begin upon the effective date of this Order.

3. Respondent is assessed a civil penalty of \$880,000.00, with \$540,000.00 held in abeyance, provided that respondent fulfills the payment plan noted below and does not violate the OFPA and the NOP regulations and standards during the Respondent's three-year suspension. The remaining \$340,000.00 shall be paid in quarterly installments over a period of five years, with the first installment of \$17,000.00 due April 1, 2016. The remaining 19 installments of \$17,000.00 shall be due the first of the month every 3 months until all payments have been made.

The provisions of this order shall become effective upon issuance.

Copies of this decision shall be served upon the parties.


Yorgo Foods, Inc.
Respondent


Buren W. Kidd
Attorney for Complainant

Done at Washington, D.C.

this 1st day of April, 2016


Administrative Law Judge

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