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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	OFPA Docket No. 18-0074
	)	
Natural Food Certifiers.	)	
	)	
Respondent.	)	Decision without Hearing by
	)	Reason of Consent

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, Natural Food Certifiers, 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 in paragraph I of the Complaint and specifically admits that the Secretary has jurisdiction in this matter, neither admits nor denies the remaining allegations, waives oral hearing and further procedure, waives all rights to seek judicial review and otherwise challenge or contest the validity of this decision, including waiving challenges to the Administrative Law Judge's authority to enter this Decision and Order under the Administrative Procedure Act and the Constitution of the United States, and waives any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 et seq.) for fees and other expenses incurred by Respondent in connection with this proceeding or any action against any USDA employee in their individual capacity.

Complainant agrees to the entry of this consent decision.

Conclusions

1. Natural Food Certifiers (Respondent) is a corporation whose mailing address is 100 Lawrence Street, Suite 304, Monsey, NY, 10952.

2. Respondent has been a certifying agent accredited by the United States Department of Agriculture (USDA) National Organic Program (NOP) since October 8, 2002.

3. On May 9, 2016, NOP issued the Respondent a Notice of Noncompliance for violations found during NOP's December 15-18, 2015 mid-term assessment of the Respondent's accreditation program. The assessment found that the Respondent failed to resolve two (2) outstanding noncompliances identified during previous accreditation assessments in 2010 and 2012. The assessment also found seventeen (17) new noncompliances. The noncompliances cited the Respondent's failure to comply with the USDA organic regulations and NOP program requirements in several areas central to its role as an accredited certifying agent, including, but not limited to: its conduct of onsite inspections; failure to obtain and verifying organic systems plans; failure to issue complete and correct organic certificates; failure to provide staff training and ensuring staff competency in NOP program requirements; and failure to carry out various certification procedures.

4. On June 7, 2016, the Respondent responded to the May 9, 2016 Notice of Noncompliance by submitting seventeen (17) proposed corrective actions for the cited noncompliances.

5. On June 21, 2016, NOP directed the Respondent to submit revised corrective actions, as NOP review found that sixteen (16) of the seventeen (17) submitted corrective

actions were inadequate to address the corresponding noncompliance. Further, the Respondent failed to submit corrective actions for the two (2) outstanding noncompliances from previous assessments.

6. On July 4, 2016, the Respondent submitted revised corrective actions to NOP.

7. On September 1, 2016, NOP issued the Respondent a Notice of Proposed Suspension of Accreditation. The Notice cited that the Respondent's June and July 2016 submitted corrective actions for eighteen (18) noncompliances were either incomplete or did not sufficiently address the corresponding noncompliance.

8. On October 3, 2016, the Respondent filed a timely appeal of the Notice of Proposed Suspension of Accreditation with the AMS Administrator.

9. On July 7, 2017, the AMS Administrator issued a decision denying the Respondent's appeal of the Notice of Proposed Suspension, citing the Respondent's failure to adequately address the May 9, 2016 Notice of Noncompliance or otherwise demonstrate a capacity to comply with accreditation requirements under the USDA organic regulations.

10. On August 16, 2017, the Respondent filed a timely request for a hearing before an Administrative Law Judge.

Respondent having admitted the jurisdictional facts, and the parties having agreed to the entry of this decision, this Decision Without Hearing by Reason of Consent will be entered.

Order

1. Within twenty-four (24) months of the issuance of this Order, Respondent will undergo two additional accreditation audits conducted by NOP at Respondent's expense,.

2. Within twenty-four (24) months of the issuance of this Order, Respondent will undergo two additional witness audits of an on-site inspection of a USDA organic program certification operation, with those witness audits conducted by NOP at Respondent's expense. The inspections should occur roughly annually, with the first inspection occurring after ten (10) months have passed, and the second inspection occurring before the full twenty-four (24) months have passed.

3. Respondent will obtain the services of a qualified accreditation consultant to develop an on-going training program for certification staff, inspectors, and contractors to ensure an adequate staff skill level for maintaining compliance with the USDA organic regulations. Respondent's training will provide a minimum of 40 hours of training time per year for two (2) years. Respondent's training materials will address USDA organic regulations, NOP Handbook, NOP international trade arrangements and NOP policy updates. Respondent will submit its annual training plan to NOP within three (3) months of the issuance of this Order and on the same date the following year.

4. Respondent will submit objective evidence of their implemented written or electronic system—including a description of their quality management system for version control of Respondent templates, operator file documents, and label reviews—to the NOP within one (1) month of the issuance of this Order.

5. Respondent will submit future corrective actions using the format it used for its submission to the NOP on May 23, 2018.

6. Respondent will contract with an outside entity to conduct its annual employee performance evaluation of the Administrator, Reuven Flamer. The outside entity will be knowledgeable of the USDA organic regulations, and Respondent will not otherwise employ the outside entity either as an employee or contractor.

The provisions of this order shall become effective upon issuance.

Copies of this decision shall be served upon the parties.

[redacted]

Reuven Flamer for
Natural Food Certifiers

[redacted]

Jonathan Gordy
Attorney for Complainant

Done at Washington, D.C.
This 29 day of August 2018

[redacted] for

Administrative Law Judge

Channing D. Strother
Acting Chief
Administrative Law Judge