

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

7/11/05 33
FILED

In re:) FMIA Docket No.05-0004
) PPIA Docket No.05-0005
Rebhan R & W Meat Company, Inc.,)
Jeffrey G. Rebhan, and Edwin Rebhan,)
)
) STIPULATIONS,
) CONSENT DECISION and ORDER
Respondents)

This is a proceeding under the Federal Meat Inspection Act (FMIA), as amended (21 U.S.C. §§ 601 et seq.), and under the Poultry Products Inspection Act (PPIA), as amended (21 U.S.C. §§ 451 et seq.), and the applicable Rules of Practice (7 C.F.R. §§ 1.130 et seq., 9 C.F.R. §§ 500 et seq.) to withdraw a grant of Federal meat inspection service under Title I of the FMIA and a grant of Federal poultry inspection service under the PPIA from respondents Rebhan R & W Meat Company, Inc. in its corporate capacity, and Jeffrey G. Rebhan and Edwin Rebhan, in their individual capacity. This proceeding was commenced by a Complaint filed on May 13, 2005 by the Acting Administrator, Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA), who is responsible for the administration of Federal meat and poultry inspection service under the FMIA and PPIA.

The parties have agreed that this proceeding should be terminated by the entry of the Consent Decision and Order set forth below and have agreed to the following stipulations and findings of fact:

1. For the purpose of these stipulations and the provisions of this Consent Decision and Order only, respondents Rebhan R & W Meat Company, Inc., Jeffrey G. Rebhan, and Edwin Rebhan, admit all the jurisdictional allegations of the Complaint, and waive:

(a) Any further procedural steps;

(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, other than to seek enforcement of the terms of this agreement.

2. 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 the respondent in connection with this proceeding.

3. Respondents, their owners, officers, directors, partners, successors, affiliates, and assigns, waive, in addition to the action waived in paragraph two above, any other action against USDA or its employees in connection with this proceeding.

Findings of Fact

1. Rebhan R & W Meat Company, Inc. (“Rebhan, Inc”) is now, and at all times material herein was, a corporation organized and existing under the laws of the State of Missouri and conducting business in the State of Missouri under the same name.

2. Rebhan, Inc. is now, and at all times material herein was, a corporation doing business as an meat and poultry processor and seller of meat and poultry products under a United States Department of Agriculture grant of inspection (establishment # 8665 & P-8865) located at 3532 South Broadway, St. Louis, Missouri, 63118.

3. Rebhan, Inc., establishment 8865 & P-8865, is now, and at all times material herein was, a recipient of Federal inspection service under Title I of the FMIA and under the PPIA at said establishment and location in St. Louis, Missouri.

4. Respondent Jeffrey G. Rebhan, is now, and at all times material herein since December 1998 was, President of Rebhan, Inc. and responsibly connected to its business operations, and as President of Rebhan, Inc. did, and does have primary management responsibility for establishment # 8865 & P-8865 located at 3532 South Broadway, St. Louis, Missouri, 63118. Prior to December 1998, Respondent Jeffrey G. Rebhan, was at all times material herein, Vice-President of Rebhan, Inc.

5. Respondent Edwin Rebhan, was, at all times material until December 1998, President of Rebhan, Inc. and responsibly connected to its business operations, and until December 1998, did have primary management responsibility for establishment # 8865 & P-8865 located at 3532 South Broadway, St. Louis, Missouri, 63118. Respondent Edwin Rebhan, at all times material herein, was working at Rebhan, Inc, and until recently had been working at Rebhan, Inc., establishment 8665 & P-8665, located at 3532 South Broadway, St. Louis, Missouri, 63118.

6. On or about April 21, 2005, in the U.S. District Court for the Eastern District of Missouri, respondent corporation Rebhan, Inc. pleaded guilty, was adjudged guilty, and was convicted of two (2) misdemeanors for violations of 18 U.S.C. § 2 and the FMIA, specifically, in violation of 21 U.S.C. §§ 601(m)(4), 610(d), and 676(a), for causing meat and meat products transported in commerce to become adulterated in that the meat and meat products were held under insanitary conditions whereby the meat or meat products may have become contaminated with filth or whereby it may have been rendered injurious to health.

7. On or about April 21, 2005, in the U.S. District Court for the Eastern District of Missouri, respondent Jeffrey G. Rebhan, in his individual capacity, pleaded guilty, was adjudged guilty, and was convicted of one (1) misdemeanor for violating 18 U.S.C. § 2 and the FMIA, specifically, in violation of 21 U.S.C. §§ 601(m)(4), 610(d), and 676(a), for causing meat and meat products transported in commerce to become adulterated in that the meat and meat products were held under insanitary conditions whereby the meat or meat products may have become contaminated with filth or whereby it may have been rendered injurious to health.

8. On or about April 21, 2005, in the U.S. District Court for the Eastern District of Missouri, respondent Edwin Rebhan, in his individual capacity, pleaded guilty, was adjudged guilty, and was convicted of one (1) felony for violating 18 U.S.C. § 2 and the FMIA, specifically, in violation of 21 U.S.C. §§ 601(m)(4), 610(c), and 676(a), for selling or offering for sale meat and meat products transported in commerce for distribution, attempted distribution, or with an intent to defraud, and such meat and meat products were adulterated in that they were held under insanitary conditions whereby the meat or meat products may have become contaminated with filth or whereby it may have been rendered injurious to health.

Conclusion

Inasmuch as the parties have agreed to the provisions set forth in the Consent Decision in disposition of this proceeding, the following Order shall be issued.

Order

1. Inspection services under Title I of the FMIA and under the PPIA are withdrawn from respondent corporation Rebhan, Inc., its owners, including respondent Jeffrey G. Rebhan, officers, directors, partners, successors, affiliates, and assigns, directly or indirectly through any

corporate device, for a period of five (5) years beginning on the effective date of this Consent Decision and Order. However, said withdrawal of Federal meat and poultry inspection services for a five (5) year period shall be held in abeyance and Federal meat and poultry inspection services shall be and shall continue to be provided to respondent corporation Rebhan, but only for so long as all of the terms and conditions of this Consent Decision and Order set forth below, in addition to all other requirements to maintain meat and poultry inspection services under the FMIA and PPIA as enumerated in the appropriate USDA regulations, are properly and fully complied with and met for the duration of this Consent Decision and Order.

2. Edwin Rebhan, in his individual capacity, from the effective date of this Consent Decision and Order, shall:

(a) be completely divested of any financial relationship of any kind with respondent corporation Rebhan, Inc., its owners, officers, partners, successors, affiliates, and assigns, directly or indirectly through any corporate device;

(b) be completely operationally divested from Rebhan, Inc. and thereby agrees to no longer work at any time in any capacity or manner at Rebhan, Inc. establishment # 8665 & P-8665; and

(c) not be present at the Rebhan, Inc. establishment at any time when any activities regulated by the FMIA or PPIA are being conducted.

(d) notwithstanding anything to the contrary in the foregoing, nothing herein shall preclude Edwin Rebhan from receipt of any payments from Rebhan, Inc., or its owners or officers, etc., as a result of the sale of Rebhan, Inc., in or about 1999, or as a result of monies loaned by respondent Edwin Rebhan and/or his wife, to or for Rebhan, Inc.

(e) also, notwithstanding the foregoing, nothing herein shall prohibit Edwin Rebhan from visiting Rebhan, Inc. establishment # 8665 & P-8665 at a time when there are no activities regulated by the FMIA or PPIA being conducted therein.

3. Except as noted above in paragraph 2 above, Rebhan, Inc. shall ensure that by the effective date of this Consent Decision and Order, Edwin Rebhan, in his individual capacity:

(a) has been completely divested of any financial relationship of any kind with respondent corporation Rebhan, Inc.;

(b) has been completely operationally divested from Rebhan, Inc. and thereby not employed at any time in any capacity or manner at Rebhan, Inc, establishment # 8665 & P-8665; and,

(c) will not be present at the Rebhan, Inc.'s establishment at any time when any activities regulated by the FMIA or PPIA are being conducted.

4. By the effective date of this Order, respondent corporation Rebhan, Inc. shall submit to the Director, Evaluation and Enforcement Division, Office of Program Evaluation, Enforcement and Review (OPEER) (hereinafter "Director"), FSIS, USDA, written documentation verifying that Rebhan, Inc. has completely complied with all the provisions and terms of paragraphs two and three of this Order.

5. Rebhan, Inc., or any of its owners, including respondent Jeffrey G. Rebhan, in his individual capacity, officers, directors, partners, employees, agents, affiliates, successors, or assigns, shall not be found by any court or judicial authority of any governmental entity to have:

(a) violated any section of the FMIA, PPIA, or the Egg Products Inspection Act (EPIA), or any regulations promulgated under those Acts;

(b) violated any state or local statute or regulation involving the preparation, sale, transportation, distribution, or attempted distribution of any adulterated or misbranded meat or poultry product;

(c) committed any felony or more than one fraudulent criminal act;

(d) violated any federal, state, or local statute involving the assault, threat of assault, intimidation, or interference with any USDA employee in the performance of his or her official duties under any USDA laws or regulations; and

(e) Rebhan, Inc., or any of its owners, officers, directors, partners, employees, agents, affiliates, successors, or assigns, including Jeffrey G. Rebhan, in his individual capacity, shall not knowingly make or cause to be made, any false entry into any account, record, report, or memorandum as required by (1) the FMIA, PPIA, EPIA, and the regulations promulgated under those Acts, (2) this Consent Decision and Order, and/or (3) otherwise kept by the respondent corporation Rebhan, Inc., or willfully neglect to make, fail to make, or cause such failure to be made, full and accurate entries into such accounts, records, reports, or memoranda.

6. Rebhan, Inc. shall not knowingly hire or add any new individual who has been convicted in any federal or state court of any felony, or of more than one misdemeanor based upon the acquiring, handling, distributing or attempted distributing of unwholesome, mislabeled, or deceptively packaged food, or fraud in connection with transaction in foods; and, shall immediately terminate its connection with any such individual when that individual's conviction becomes known to Rebhan, Inc. or to any of its owners, officers, directors, partners, employees, agents, affiliates, successors, or assigns.

7. Rebhan, Inc. shall satisfactorily meet and comply with all the conditions specified in 9 C.F.R. Part 416 (including, but not limited to, having Sanitation Standard Operation Procedures (SSOP)) and 9 C.F.R. Part 417 (Hazard Analysis and Critical Control Point (HACCP) plans).

8. Rebhan, Inc. shall maintain full, complete and accurate written records of all business activities applicable to the FMIA, PPIA, state and local laws. Such records may include, but not limited to, bid solicitations, government contracts, product specification worksheets, SSOP and HACCP records. Respondent shall make these records available upon request for review and/or copying to any authorized representative of the Secretary.

9. Rebhan, Inc. shall implement and maintain an effective compliance program to ensure that all inspected meat, poultry, and egg products will be maintained in a manner to preclude their adulteration, contamination, and/or misbranding; and to ensure that all processed and inspected products are wholesome and do not contain any undeclared substances, e.g., soy product, textured vegetable protein, plant material, or added water.

This compliance program, which may be described in a separate document or may be incorporated in Rebhan, Inc.'s SSOP and/or HACCP plans, shall include provisions to:

(a) ensure that all meat and poultry products are produced or processed in accordance with product specifications and formulations, and in accordance with the requirements of 9 CFR Part 318.6;

(b) ensure that all meat and poultry products produced or processed, and/or re-packed at Rebhan, Inc.'s establishment do not have any undeclared substance of any kind, including added water;

(c) ensure that all meat and poultry products produced or processed, and/or re-packed at Rebhan, Inc.'s establishment are properly labeled;

(d) ensure appropriate documentation of all findings, corrective actions taken, and preventive measures implemented, when any irregularities involving adulterated, contaminated, and/or misbranded meat or poultry products at Rebhan, Inc.'s establishment are discovered;

(e) ensure recall procedures to effectively recall potentially adulterated or misbranded products produced or processed, and/or re-packed in Rebhan, Inc.'s establishment and found within distribution channels;

(f) notify the on-site FSIS inspector of any known potential adulteration or misbranding problems or of any deviations or deficiencies that would cause work stoppage, and the corrective action(s) taken during a daily review; and

(g) implement and document immediate corrective action(s) for all deviations or deficiencies recorded on a Noncompliance Record, (including documenting the acknowledgment of the deviation or deficiency, the cause of the deviation or deficiency, what steps were taken to remedy the deviation or deficiency, and what steps will be taken to prevent recurrences).

10. Rebhan, Inc. shall, on or before the expiration of thirty (30) calendar days from the effective date of this Consent Decision and Order, designate one full-time and one alternate employee to review all aspects of the compliance program (as required in paragraph nine above) on a daily basis at its establishment. All daily reviews conducted by the designated employee or alternate shall be recorded, including, but not limited to, the date and time, findings, initials of the designated employee or alternate, and corrective action(s) taken. The designated employee or

alternate shall have authority to and shall hold up production, stop production, remove product from production, or take positive control of any products produced, processed, re-packed, or stored at the establishment which are, or believed to be, adulterated or misbranded, when facility sanitation, or production deficiencies are observed.

11. Rebhan, Inc. shall, on or before the expiration of sixty (60) calendar days from the effective date of this Consent Decision and Order, submit to the Director, FSIS, USDA, or his or her designee, Rebhan, Inc.'s proposed compliance program for review. The parties shall make every effort to ensure that Rebhan, Inc.'s compliance program is reviewed and implemented in an expeditious manner.

12. Rebhan, Inc. shall, within sixty (60) days of the effective date of this Consent Decision and Order, effectively implement and have on file, a corporate code or policy statement of conduct and compliance and ethics in business practices (hereinafter "Corporate Code") applicable to all business entities and individuals within or employed by Rebhan, Inc.

The Corporate Code shall include: (a) a statement of corporate policy addressing business ethics and public trust; (b) a statement of Rebhan, Inc.'s commitment to comply with all applicable laws and regulations in the conduct of its business; (c) guidelines for Rebhan, Inc.'s employees to follow with respect to food safety and ethics issues; and (d) shall provide acceptable corrective and preventative assurances to preclude any acts of assault, intimidation, or interference of any USDA employee. Such Corporate Code shall be reviewed by the Director, FSIS, USDA. The Corporate Code shall be permanently displayed in a prominent location in Rebhan, Inc.'s establishment. The Corporate Code shall be discussed with all current and future Rebhan, Inc.'s employees.

13. Within one hundred and eighty (180) days of the effective date of this Order, all responsibly connected individuals of Rebhan, Inc. shall participate in a training program encompassing ethical business practices which has received the prior approval of the Director, FSIS, USDA. Rebhan, Inc. shall maintain records documenting the successful completion of such training and shall have those records available upon request by any USDA employee.

14. During the five (5) year period of the Consent Decision and Order, Rebhan, Inc. shall provide the Director, FSIS, USDA, with an annual report regarding Rebhan, Inc.'s, and Jeffrey G. Rebhan's, in his individual capacity, compliance with all the terms of this Consent Decision and Order.

15. If a violation of paragraphs two (2) through fourteen (14) of this Order occurs during the five (5) year period of this Consent Decision and Order, the Administrator of FSIS, USDA, may summarily withdraw Federal inspection services from Rebhan, Inc. upon determination by the Director, FSIS, USDA, of a violation of any condition set forth in the said paragraphs. A summary withdrawal of inspection service shall be subject to Rebhan, Inc.'s right to request an expedited hearing on the violation(s) alleged before a USDA Administrative Law Judge in order to determine the reasonableness of the Director's decision.

16. Nothing in these Stipulations and Consent Decision and Order shall preclude the referral of any violation of law to the U.S. Department of Justice for possible criminal or civil proceedings based upon any future conduct not previously addressed, considered or adjudicated.

17. If any provision of this Consent Decision and Order is declared invalid, such declaration shall not affect the validity of any other provision herein. Also, the Complainant will



cooperate with reasonable requests for clarification/information concerning the items contained in this Consent Decision and Order or contemplated hereby.



18. All the provisions of this Consent Decision and Order are effective and applicable for a period of five (5) years commencing with the effective date of this Consent Decision and Order.

19. This Consent Decision and Order shall become effective upon issuance by the Administrative Law Judge.

SIGNATURES OF THE PARTIES FOLLOW:

Rebhan R & W Meat Company



REBHAN R & W MEAT COMPANY, INC.
Respondent
By: JEFFREY G. REBHAN
President of Rebhan R & W Company, Inc.


SCOTT C. SAFIAN
Director, Evaluation and
Enforcement Division,
OPEER, FSIS, USDA
For the COMPLAINANT


and by





NEAL F. PERRYMAN
Attorney for Respondent
REBHAN R & W MEAT CO., INC.



JEFFREY G. REBHAN, Respondent
in his individual capacity


EDWIN REBHAN, Respondent
in his individual capacity


NEALE F. PERRYMAN
Attorney for JEFFREY G. REBHAN,
Respondent, in his individual capacity

and


Attorney for EDWIN REBHAN,
Respondent, in his individual capacity


JAMES A. BOOTH,
Attorney for COMPLAINANT

Issued this 17th day of June, 2005,

at Washington, D.C.


ADMINISTRATIVE LAW JUDGE