

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	FMIA Docket No. 06-00_	0007
)	PPIA Docket No. 06-00_	0004
Advanced Frozen Foods, Inc.,)		
Roy Tuccillo and Adrienne Pacifico)		
)		
)		
)		
Respondents.)	CONSENT DECISION and ORDER	

This proceeding was instituted under Title I of the Federal Meat Inspection Act, as amended (21 U.S.C. section 601 et seq.) (“FMIA”), Poultry Products Inspection Act (21 U.S.C. section 451 et seq.) (“PPIA”), and the applicable Rules of Practice (7 C.F.R. section 1.130 et seq. and 9 C.F.R. section 500.1 et seq.), to withdraw Federal inspection services from Advanced Frozen Foods, Roy Tuccillo, and Adrienne Pacifico (hereinafter referred to collectively as Respondents). This proceeding was commenced by a complaint filed on July 31, 2006 by the Administrator of the Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA). 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. section 1.138).

Respondents admit the allegations in the complaint and specifically admit that the Secretary has jurisdiction in this matter. Respondents neither admit nor deny the remaining allegations, 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.). 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

(a) Advanced Frozen Foods, Inc., herein referred to individually as Respondent Corporation, is now and at all times material herein was, a corporation located at 28-32 Urban Avenue, Westbury, New York 11590. Respondent Corporation has a mailing address of P.O. Box 887, Westbury, New York 11590.

(b) Roy Tuccillo, herein referred to individually as Respondent Tuccillo, is and at all times material herein was, the President and holder of ten percent or more of voting stock of Respondent Corporation.

(c) Adrienne Pacifico, herein referred to individually as Respondent Pacifico, is and at all times material herein was, the Manager of Respondent Corporation.

(d) On September 20, 2004, Respondent Corporation submitted an application of Federal meat and poultry inspection services for the above-named business.

(e) On December 14, 1999, in the United States District Court, Eastern District of New York, Respondent Tuccillo, President and stock holder in Respondent Corporation, was convicted of one felony count of conspiracy to defraud the Internal Revenue Service, in violation of 18 U.S.C. § 371.

(f) On September 17, 1999, in the United States District Court, Eastern District of New York, Respondent Pacifico, Manager of Respondent Corporation, was convicted of one felony count of subscribing a false tax return, in violation of 26 U.S.C. § 7206(1).

(g) Respondent Corporation was and has been granted federal inspection services, pursuant to the FMIA and the PPSA, since February 22, 2005, at the above named

establishment that was and has been designated as Official Establishment Number 32022/P-32022.

Conclusion

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

Order

Federal meat inspection services under Title I of the FMIA, and Federal poultry products inspection services under the PPIA, are withdrawn from Respondents and Respondent Corporation's owners, officers, directors, partners, affiliates, successors, and assigns 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 inspection services shall continue to be provided to Respondents for so long as the conditions set forth below, in addition to all other requirements for applicable inspection services, are met.

1. Respondent Tuccillo, Respondent Pacifico, and Respondent Corporation and its owners, officers, directors, partners, employees, agents, affiliates, successors, and assigns shall not:

a) violate any section of the FMIA, PPIA or any regulations promulgated thereunder, or state or local statutes involving the preparation, sale, transportation, distribution or attempted distribution of any meat or poultry products;

b) commit any felony or other criminal act involving the sale or distribution of unwholesome, adulterated or misbranded meat or poultry products;

c) willfully make or cause to be made any false entry into any accounts, records, or memoranda kept by the respondents in compliance with applicable Federal or state statutes or regulations; neglect or fail to make full true and correct entries in such accounts, records or memoranda; or fail to keep such accounts, records or memoranda that fully and correctly disclose all transactions in Respondents' business;

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

e) conduct any operation requiring Federal inspection outside the official hours of operation without first submitting a written request to, and receiving written approval from, FSIS.

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 distribution of unwholesome, mislabeled or deceptively packaged food, or based upon fraud in connection with transactions in food. Respondents shall immediately terminate their connection with any such individual when that individual's conviction becomes known to Respondents.

3. Respondents shall comply with the Sanitation Performance Standards (SPS) and shall establish and maintain a Sanitation Standard Operating Procedure (SSOP) and a Hazard Analysis and Critical Control Point (HACCP) system in compliance with regulatory requirements specified in Title 9, Code of Federal Regulations, Parts 416 and 417.

4. Respondents shall maintain full, complete and accurate written records of all business activities involved in their operations under the FMIA and PPIA, including the SSOP and HACCP record requirements. Respondents shall make these records available for review and copying upon request of any authorized representative of the Secretary.

5. Within ninety days (90) of the effective date of this Order, Respondents Tuccillo and Pacifico shall participate in and successfully complete a training program or

educational course encompassing ethical business practices which has received the prior approval of the Director, Evaluation and Enforcement Division (EED) of the Office of Program Evaluation, Enforcement and Review, FSIS (hereinafter, the Director, EED). 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.

6. Within sixty (60) days of the effective date of this Order, Respondents shall develop and implement a corporate code or policy statement of business conduct and ethics to ensure food safety and regulatory compliance in business practices (hereinafter "Corporate Code") applicable to all business entities and individuals within or employed by Respondent. The Corporate Code, at 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 Corporate Code shall be submitted to the Director, EED for review and approval prior to implementation, shall be permanently displayed in a prominent location in Respondents' establishment, and shall be discussed with all current and new employees.

7. Respondents shall provide an annual report to the Director, EED regarding

Respondents' compliance with all the terms and conditions of this Order, and FSIS statutory and regulatory requirements, including 9 C.F.R. Parts 416 and 417.

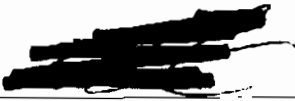
8. Respondents shall fully and completely cooperate with any FSIS investigation, inquiry, review or examination of Respondents or Respondents' compliance with the FMIA, PPIA or this Order.

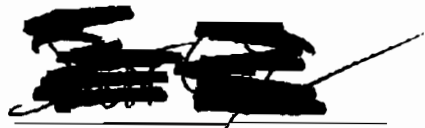
9. The provisions set forth in paragraphs 1 through 8 of this Order shall be effective for a period of three (3) years.

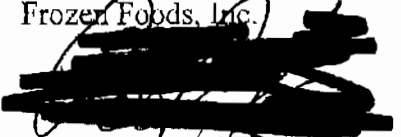
10. The Administrator, FSIS, shall have the right to withdraw inspection services upon a determination by the Administrator, or his or her designee, that one or more conditions set forth in paragraphs 1 through 8 of this Order have been violated. It is acknowledged that respondents retain the right to 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. 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 there under.

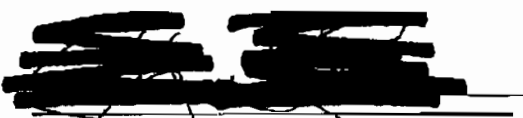
11. If any provision of this Order is declared invalid, such declaration shall not affect the validity of any other provision herein.

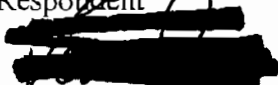
This Order shall become effective upon issuance by the Administrative Law Judge.


Mr. Roy Tuccillo,
Respondent and President
of Respondent Advanced
Frozen Foods, Inc.



Scott C. Safian
Director, Evaluation and
Enforcement Division, OPEER, FSIS
For the Complainant


Ms. Adrienne Pacifico,
Respondent


Attorney for Complainant
Office of the General Counsel


Leonard Kreincas
Attorney for Respondents

Issued this 15th day of August, 2006
at Washington, D.C.


Administrative Law Judge