

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) FMIA Docket No. 04-0007
)
Mr. Steven Matteson,) PPIA Docket No. 04-0008
Mr. Kenneth E. Barrows,)
North American Packers,)
d/b/a Schallers Meats)
)
Respondents) DEFAULT DECISION AND ORDER

This is an administrative proceeding to withdraw federal inspection services from respondent North American Packers, d/b/a/ Schallers Meats, respondent Steven Matteson and respondent Kenneth E. Barrows (hereinafter respondents). This proceeding was instituted by an amended complaint filed on July 22, 2005, by the then Acting Administrator of the Food Safety and Inspection Service, United States Department of Agriculture. The complaint alleged that respondents had violated the Federal Meat Inspection Act (FMIA), (21 U.S.C. § 601 *et seq.*), and the Poultry Products Inspection Act (PPIA), (21 U.S.C. § 451 *et seq.*), the regulations issued thereunder and the provisions of the Stipulation and Consent Decision in FMIA Docket No. 04-0007 and PPIA Docket No. 04-0008. The proceeding is in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 *et seq.* and Part 500 of Title 9 of the Code of Federal Regulations (9 C.F.R. Part 500).

Copies of the complaint and the Rules of Practice (7 C.F.R. § 130 *et seq.*) governing proceedings under the Act were served upon respondents by the Hearing Clerk by certified mail.

Respondents were informed in a letter of service than an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the complaint.

Respondents have failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted by respondents' failure to file an answer, are adopted and set forth herein as findings of fact.

This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. North American Packers, d/b/a Schallers Meats, respondent business, is a meat and poultry slaughtering and processing establishment (hereafter, establishment) located at 430 State Route 8, Bridgewater, New York 13313.

2. Respondent Steven Matteson, who resides at 13 Division Street, Richfield Springs, New York, 13439, is a co-owner of and a responsibly connected individual to North American Packers.

3. Respondent Kenneth E. Barrows, who resides at 431 State Route 8, Bridgewater, New York 13313 is a co-owner of and a responsibly connected individual to North American Packers.

4. Respondents are now, and at all times material herein were the recipients of inspection services under the PPIA and Title I of the FMIA under Establishment number 31921/P-31921.

5. (a) On July 26, 2004, a complaint was filed, pursuant to

section 401 of the FMIA (21 U.S.C. § 671) and section 18 of the PPIA (21 U.S.C. § 467a), by the Acting Administrator of the Food Safety and Inspection Service, seeking the denial of inspection services under the PPIA and Title I of the FMIA from respondents based on the two felony convictions of Respondent Kenneth E. Barrows.

(b) On January 29, 1997, in the Otsego County Court, Otsego County, Cooperstown, New York, Mr. Kenneth E. Barrows was convicted of the offense of Arson, 3rd degree, a Class C felony, sentenced on March 7, 1997, and served a term of incarceration.

(c) On March 11, 1997, in the Herkimer County Court, Herkimer County, Herkimer, New York, Mr. Kenneth E. Barrows was convicted of the offense of Criminal Possession of Stolen Property, a Class E felony, sentenced on March 11, 1997 and served a term of incarceration.

(d) On July 27, 2004, Administrative Law Judge Marc R. Hillson issued a Stipulation and Consent Decision in FMIA Docket No. 04-0007 and PPIA Docket No. 04-0008 denying inspection and holding the denial of inspection services in abeyance for a period of three (3) years for so long as respondents complied with specified terms and conditions of the consent order.

6. Paragraph 1 of the Order provided: "Respondents ... shall not (A) violate any section of the FMIA, PPIA, or State or local statutes involving the preparation, sale, transportation or attempted distribution of any adulterated or misbranded meat or poultry products; (B) commit any felony or fraudulent criminal

act; (C) violate any conditions of parole; (D) make or cause to be made, any false entry into any accounts, records, or memorandums kept by the Respondents."

7. Paragraph 3 of the Order provided: "Respondents shall maintain Sanitation Performance Standards (SPS), a Sanitation Standard Operating Procedure (SSOP), a Hazard Analysis and Critical Control Point (HACCP) system (ensuring that no adulterated product is produced or shipped), and maintain a *Listeria monocytogenes* sampling and testing program for ready-to-eat (RTE) products in compliance with regulatory requirements specified in Title 9, Code of Federal Regulations, Parts 416, 417 and 430 respectively."

8. Paragraph 6 of the Order provided: "Within one hundred and eighty (180) days of the effective date of this Order, Mr. Kenneth E. Barrows shall participate in and successfully complete a training program encompassing ethical business practices which has received prior approval of the Director."

9. Paragraph 8 of the Order provided: "The Administrator, FSIS, shall have the right to summarily 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 7 of this Order has been violated. It is acknowledged that Respondents retain the right to request an expedited hearing pursuant to the Rules of Practice concerning any violation alleged as the basis for a summary withdrawal of inspection services."

10. Respondents failed to maintain SPS, SSOP and HACCP systems in compliance with regulatory requirements specified in Title 9, Code of Federal Regulations, Parts 416 and 417 (9 C.F.R. 416 and 9 C.F.R. 417) in violation of paragraph 3 of the Order. On January 31, 2005, FSIS issued a Notice to Show Cause letter to respondents, based on the establishment's failure to maintain SPS, SSOP and HACCP systems and to implement effective corrective actions and preventive measures to ensure compliance with 9 C.F.R. Parts 416 and 417. After respondents implemented corrective actions and measures, FSIS issued a Notice of Warning letter to respondents on April 26, 2005, advising respondents that future violations could result in an administrative action to summarily withdraw federal inspection services. On June 10, 2005, FSIS issued a second Notice of Show Cause letter to respondents, based on the establishment's failure to maintain SPS, SSOP and HACCP systems. FSIS also documented numerous deficiencies on non-compliance records issued to the establishment from October, 2004 through June, 2005.

11. Respondent Kenneth E. Barrows failed to participate in and successfully complete a training program encompassing ethical business practices in violation of paragraph 6 of the Order.

12. On September 3, 2004, February 17, 2005 and May 24, 2005, the New York State Department of Agriculture and Markets, Division of Food Safety Services issued Sanitary Inspection Reports to Respondent business, documenting deficiencies in sanitation at Respondent's state-licensed retail and New York

State Article 5A slaughter operations. Respondents were also cited for conducting vacuum packaging operations at its retail operation without the proper license, resulting in the seizure and destruction of the vacuum packaged meat products. Respondents therefore failed to comply with paragraph 1(A) of the Order.

13. On June 30, 2005, FSIS delivered to respondents a Notice of Summary Withdrawal letter, based on respondents' inability to comply with the statutory requirements of the FMIA and PPIA, the federal regulations issued thereunder, and the terms of the Stipulation and Consent Decision. Also on June 30, 2005, federal inspection services were summarily withdrawn from respondents.

Conclusions

By reason of the facts found in the Findings of Fact respondents have violated the FMIA and PPIA, the regulations issued thereunder and the specified conditions of the Stipulation and Consent Decision issued on July 27, 2004.

Order

Federal inspection services to respondent North American Packers, d/b/a/ Schallers Meats, respondent Steven Matteson and respondent Kenneth E. Barrows are hereby withdrawn.

Copies of the Decision and Order shall be served by the Hearing Clerk upon respondents and may be appealed pursuant to 7 C.F.R. § 1.145. 7 C.F.R. § 1.139. Respondents have thirty (30) days from service of the Decision and Order to appeal the

decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. 7 C.F.R. § 1.145. If no appeal is filed, the Decision and Order shall become final and effective without further proceedings thirty-five (35) days after the date of service. However, no decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal. 7 C.F.R. § 1.139.

Done at Washington, D.C. this
_____ day of _____, 2005

Administrative Law Judge