

In re: JAY AND BOOTS MEATS, INC.
FMIA Docket No. 00-0005.
PPIA Docket No. 00-0004.
Decision and Order filed October 16, 2000.

James D. Holt, for Complainant.
Respondent, Pro se.

Decision and Order issued by James W. Hunt, Administrative Law Judge.

The Administrator of the Food Safety and Inspection Service, United States Department of Agriculture [herein the complainant], instituted this administrative proceeding under the Federal Meat Inspection Act (21 U.S.C. § 601 *et seq.*)(FMIA) and the Poultry Products Inspection Act (21 U.S.C. § 451 *et seq.*)(PPIA) [herein the Acts] and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151) [herein the rules of practice], by the filing of a complaint on April 29, 2000.

The complaint alleges that, as a corporation organized and existing under the laws of the State of Tennessee, Jay and Boots Meats, Inc. [herein the respondent] was the recipient of federal inspection services at its meat and poultry processing establishment (establishment 8079/P-8079) in Knoxville, Tennessee. The complaint also alleges that on April 20, 1999, in the United States District Court for the Eastern District of Tennessee, respondent pled guilty to (1) the felony of preparing adulterated and mislabeled meat food products for commerce, with intent to defraud, in violation of 21 U.S.C. § 610(a), and (2) the felony of selling and transporting in commerce adulterated and misbranded meat food products, with intent to defraud, in violation of 21 U.S.C. § 610(c). The complaint further alleges that on July 9, 1999, United States District Judge Leon Jordan imposed upon the respondent a sentence of five years probation and \$20,000 fine for those two felony convictions.

The Acts provide that inspection services may be indefinitely withdrawn if it is determined, after opportunity for a hearing, that the respondent is unfit to engage in any business requiring inspection under the Acts because the respondent has been convicted, in any Federal or State court, of any felony. 21 U.S.C. § 671 and 21 U.S.C. § 467. The complaint stated that the respondent had been determined, by reason of the two felony convictions, to be unfit to engage in any business requiring inspection under the Acts. Complaint, ¶ IV.

The Hearing Clerk, Office of Administrative Law Judges, [herein Hearing Clerk] mailed the complaint to the respondent by certified mail on May 22, 2000. On June 29, 2000, the Hearing Clerk notified the respondent that their answer to the complaint had not been received within the required time. 7 C.F.R. § 1.136(a). Respondent has not filed an answer to date.

Pursuant to section 1.136(c) of the rules of practice (7 C.F.R. § 1.136(c)), failure to deny or otherwise respond to the allegations in the complaint constitutes,

for the purposes of this proceeding, an admission of the allegations. By this failure to file a timely answer, respondent has admitted the allegations of the complaint. Pursuant to section §1.139 of the rules of practice (7C.F.R. § 1.139) the failure to file an answer also constitutes a waiver of hearing and requires the complainant to file a proposed decision, along with a motion for the adoption thereof.

Accordingly, respondent has waived his opportunity for a hearing and the material allegations alleged in the complaint are adopted as set forth herein as the Findings of Fact. This Decision and Order is issued pursuant to section 1.139 of the rules of practice applicable to this proceeding. 7 C.F.R. § 1.139.

Findings of Fact

1. Jay and Boots Meats, Inc. is, or at all times material herein was, a corporation organized and existing under the laws of the State of Tennessee.

2. Jay and Boots Meats, Inc. operates, or at all times material herein operated, a meat and poultry processing establishment (Establishment 8079/P-8079) at 3701 Neal Road, Knoxville, Tennessee 37918.

3. Jay and Boots Meats, Inc. is the recipient of services provided under Title I of the FMIA and the PPIA at said establishment.

4. On April 20, 1999, in the United States District Court for the Eastern District of Tennessee, respondent pled guilty to one felony count for preparing adulterated and mislabeled meat food products for commerce, with intent to defraud, in violation of 21 U.S.C. § 610(a); and one felony count for selling and transporting in commerce adulterated and misbranded meat food products, with intent to defraud, in violation of 21 U.S.C. § 610(c).

5. On July 9, 1999, a federal court imposed upon respondent a sentence of 5 years probation and \$20,000 fine for the two felony convictions described in paragraph 4 above.

Conclusion

By reasons of the findings of fact, and pursuant to section 401 of the FMIA (21 U.S.C. § 671) and section 18 of the PPIA (21 U.S.C. § 467), respondent is unfit to engage in any business requiring inspection under the FMIA and the PPIA.

Order

Therefore, the following Order is issued:

Federal inspection services provided to respondent at its meat and poultry processing establishment (establishment 8079/P-8079) in Knoxville, Tennessee, pursuant to the authority of Title I of the FMIA and the PPIA, are hereby indefinitely withdrawn.

This Order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the rules of practice applicable to this proceeding (7 C.F.R. § 1.145).

[This Decision and Order became final December 8, 2000.-Editor]
