

UNITED STATES DEPARTMENT OF AGRICULTURE

2012 FEB -7 AM 11: 48

BEFORE THE SECRETARY OF AGRICULTURE

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| In re: |) | OFPA Docket No. 11-0349 |
| |) | |
| D&J Organic, Inc., |) | |
| Hydro Garden Farm, Inc., and |) | |
| Davie Yen, |) | |
| |) | |
| |) | |
| Respondents. |) | |

CONSENT DECISION

This proceeding was instituted under the Organic Foods Production Act, as amended, 7 U.S.C. § 6501 *et. seq.* (the “Act”), and the National Organic Program Regulations, 7 C.F.R. §205.1 *et. seq.* (the “NOP Regulations”), by a complaint filed by the Administrator of the Agricultural Marketing Service, United States Department of Agriculture (“USDA”) alleging that the Respondents violated the 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 Respondents admit the jurisdictional allegations in paragraph I of the complaint and specifically admit that the Secretary has jurisdiction in this matter, neither admit nor deny the remaining allegations, waive oral hearing and further procedure, and consents and agrees, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

The complainant agrees to the entry of this decision.

Findings of Fact

1. Respondent D&J Organic, Inc., is a corporation whose business mailing address is 152 Yaphank Ave., Yaphank, New York 11980. Respondents Hydro Garden Farm, Inc., and

Davie Yen have the same mailing address. Respondents 'responsibly connected' persons, as defined in the Regulations, include Julie Yen and Davie Yen.

2. At all times material hereto, Respondents were engaged in business as a certified organic producer, as defined in the OFPA, and was a certified operation since 2002, pursuant to an organic certificate issued by the Northeast Organic Farming Association of New York (NOFA-NY), an accredited certification agent of the United States Department of Agriculture (USDA). On April 29, 2002, NOFA-NY was accredited by USDA as a certifying agent under the NOP Regulations.

3. On information and belief, Respondents actual and apparent managers of the certified operations are Julie Yen and Davie Yen.

4. On November 3, 2008, NOFA-NY issued a Notice of Noncompliance and Proposed Revocation to the Respondents.

5. On December 5, 2008, the Respondents filed a timely appeal, and it was accepted for review on December 9, 2008.

6. On September 3, 2010, the Administrator of the Agricultural Marketing Service issued an advisory decision and denied the Respondents' appeal.

7. On October 7, 2010, Respondents requested a hearing before an Administrative Law Judge pursuant to NOP Regulations 7 C.F.R § 205.681(a)(2).

Conclusions

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

Order

1. The Respondents, their agents and employees, successors and assigns, directly or through any corporate or other device, shall not violate the Act and the NOP regulations.

2. Respondents' certification under the Act and Regulations is suspended for six (6) weeks, and the respondents or any person responsibly connected with respondent's operation shall be ineligible to receive certification for a period of six (6) weeks from the issuance date of this order.

This order shall have the same effect as if entered after a full hearing and shall become effective upon issuance.

Copies of this decision shall be served upon the parties.

[Redacted signature]

1.28.2012.

Davie Yen,
D&J Organic, Inc.
Hydro Garden Farm, Inc.
Respondents

[Redacted signature]

Frank Martin, Jr.
Attorney for Complainant

Done at Washington, D.C.
this 7th day of February, 2012

[Redacted signature]

Administrative Law Judge