

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

2012 APR 27 11:13 AM '12
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In re:

Bowman's Butcher Shop, LLC
and Nicholas A. Johnson

Respondents

FMIA Docket No.

12-0610

Consent Decision and Order

This is a proceeding under Title I of the Federal Meat Inspection Act, as amended (21 U.S.C. §§ 601 et seq.) ("FMIA"), and the applicable rules of practice (7 C.F.R. §§ 1.130 et seq., 9 C.F.R. §§ 500.1 et seq.) to refuse to provide Federal inspection services to Bowman's Butcher Shop, LLC, and Mr. Nicholas A. Johnson, hereinafter referred to jointly as Respondents. This proceeding was commenced by a complaint filed 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. § 1.138).

Respondents admit the allegations in paragraphs I and II of the complaint and specifically admit that the Secretary has jurisdiction in this matter. Respondents 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 Consent decision and Order.

Findings of Fact

1. Bowman's Butcher Shop, LLC, Respondent Corporation, is a corporation that engages in the slaughter of livestock and processing of meat and meat food products at the establishment located at 3452 Churchville Road, Aberdeen, Maryland, 21001.

2. Respondents, on January 24, 2012, submitted an "Application for Federal Meat, and Poultry or Import Inspection" requesting Federal Inspection services under the FMIA at the place of business in Aberdeen, Maryland.

3. Respondent Nicholas A. Johnson is identified in said application as Manager of Bowman's Butcher Shop, LLC.

4. On or about December 20, 2007, in the Circuit Court of Maryland for Harford County, Respondent Nicholas A. Johnson was convicted on three felony counts of 1st degree burglary.

Conclusion

Because the parties have agreed to the provisions set forth in the following Consent Decision and Order in disposition of this proceeding, the following Order will be issued.

Order

Federal meat inspection services under Title I of the FMIA are refused to Respondents, its owners, officers, directors, partners, affiliates, successors and assigns, directly or through any corporate or other device, for a period of three (3) years beginning on the effective date of this Order. This refusal to provide inspection services shall be held in abeyance, and meat inspection services shall be provided to Respondents, for so long as the conditions set forth below, in addition to all other requirements of applicable inspection statutes and regulations, are met:

Compliance Provisions

1. Upon the effective date of this Order, and for the duration of this Order, subject to verification by FSIS, Respondents shall comply with the Sanitation Performance Standards (SPS), Sanitation Standard Operating Procedure (SSOP), and Hazard Analysis and Critical Control Point (HACCP) regulatory requirements specified in Title 9 Code of Federal Regulations, Parts 416, and 417, as applicable.

2. Upon the effective date of this Order, and for the duration of this Order, subject to verification by FSIS, Respondents shall comply with product labeling, formulation and recall regulatory requirements specified in Title 9 Code of Federal Regulations, Parts 317, 318, 319, 381, and 418, as applicable, and shall within thirty (30) calendar days from the effective date of this Order, and subject to the verification of FSIS, develop and implement a compliance program to ensure that all inspected meat and poultry products do not become adulterated or misbranded.

This compliance program shall include at a minimum, provisions to:

(a) ensure that all meat and poultry products are prepared or processed in accordance with product specifications and formulations, and as required by 9 C.F.R. 318.6, Part 319 and 381 Subpart P;

(b) ensure that all meat and poultry products prepared, processed, and/or re-packed by Respondents do not have any undeclared substance of any kind and bear full and accurate labeling in accordance with 9 C.F.R. Part 317, 319, and Part 381 Subparts N and Y;

(c) ensure that all nutritional facts are displayed on product labels are truthful and accurate in compliance with 9 C.F.R. Part 317, Subpart B and 9 C.F.R. Part 381, Subpart Y;

(d) ensure written records are maintained of findings, corrective actions taken, and preventative measures implemented, when any non-compliance are found; and

(e) ensure written recall procedures are in place, in compliance with 9 C.F.R. 418.1 – 418.4, to effectively recall potentially adulterated or misbranded products produced or processed, by Respondents when found within distribution channels.

3. Respondents shall submit their proposed compliance program to the Director of Evaluation and Enforcement Division, Office of Program Evaluation, Enforcement and Review (OPEER), FSIS, USDA (hereinafter “Director, EED”) for review and concurrence prior to its implementation. Upon implementation of the program, Respondents shall notify FSIS program personnel of any changes or modifications to this program or any of the recordkeeping forms associated with the program.

4. Respondents shall designate one full-time and one alternate employee to be responsible for oversight of all aspects of the compliance program. The designated employee or alternate shall have authority to hold up production, stop production, remove product from production, or take positive control of any products produced, processed, packed, or stored at the establishment which are, or are believed to be, adulterated or misbranded, or when facility sanitation or production deficiencies are observed. The designated employee or alternate shall be present and available at all times when operations requiring Federal inspection are conducted.

Ethics Training and Corporate Code of Conduct

5. Within sixty (60) calendar days from the effective date of this Order, Respondents shall develop and submit for review by the Director, EED, a 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 the Respondents. The Corporate Code, at a minimum, shall include:

(a) a statement of corporate 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 or assault of, or interference with, USDA program employees.

The Corporate Code shall be permanently displayed in a prominent location in Respondents' federal establishment and shall be discussed with all current and new employees.

6. Within ninety (90) calendar days from the effective date of this Order, and annually thereafter, Respondent Nicholas A. Johnson shall participate in, and successfully complete, a training program(s) or educational course(s) encompassing ethical business practices and compliance with applicable State and Federal statutes and meat and poultry regulations. Prior to participating in each course, Respondents shall submit a detailed description of the proposed training course(s) for concurrence by the Director, EED, or designee. Respondents shall maintain, for the duration of this Order, records documenting the successful completion of such training and shall make those records available upon request to any FSIS program personnel.

Recordkeeping Provisions

7. Respondents shall record and maintain complete and accurate written records of (a) all records required to be maintained by the FMIA and PPIA, and implementing regulations; and (b) all records required by this Order.

8. Respondents shall make all records regarding its federally inspected establishment or other regulated business or business activities at said establishment available to FSIS personnel for review and/or copying immediately upon request by FSIS.

Corporate Reporting to FSIS

9. Respondents shall provide a written report annually 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.

General Provisions

10. Respondents and any of the Respondents' partners, employees, agents or affiliates shall not:

(a) violate any section of the FMIA, PPIA, the Egg Products Inspection Act (EPIA), or regulations promulgated thereunder, any state or local statute involving the preparation, sale, transportation, or attempted distribution of any adulterated, non inspected, misbranded or deceptively packaged meat, poultry, egg products or other foods or food products;

(b) commit any felony or fraudulent act or other criminal act involving fraud, conspiracy, bribery, or any other act or circumstances indicating a lack of integrity needed for the conduct of operations affecting the public health;

(c) assault, intimidate, threaten or interfere with any program employee in the performance of his or her official duties under the FMIA, PPIA, EPIA or regulations promulgated thereunder; or

(d) conduct any operation requiring Federal inspection outside Respondent Corporation's official hours of operations without first submitting a request to, and receiving approval from, the assigned FSIS personnel.

11. Respondents shall not knowingly hire or add any new individual who has been convicted, in any Federal, State, or territorial court, of any felony, or more than one misdemeanor based upon the acquiring, handling, or distributing of unwholesome, mislabeled or

deceptively packaged food, or based upon fraud in connection with transactions in food. To the extent permitted by State and Federal law, Respondents shall immediately terminate their connection with any such individual when that individual's conviction becomes known to Respondents.

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

Enforcement Provisions

13. The Administrator, FSIS, shall have the right to summarily withdraw inspection service upon a determination by the Director, EED, or his or her designee, that one or more conditions set forth in paragraphs 1 through 12 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 summary withdrawal of inspection service. This does not affect Complainant's right to suspend operations in accordance with Rules of Practice, 9 C.F.R. Part 500. Nothing in this Order shall preclude the referral of any violation of law to the U.S. Department of Justice for possible criminal or civil proceedings, or preclude the Administrator from taking other appropriate administrative action under the FMIA, PPIA, EPIA and the regulations promulgated there under.

14. The provisions in paragraphs 1 – 13 set forth in this Order shall be applicable for a period of three years, beginning on the effective date of this Order.

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

16. This Order shall be considered issued on the date that an Administrative Law Judge signs it, but shall become effective on the date that the conditional grant of Federal inspection service is issued to Respondents.

[Redacted]

Kimberly Driver, Member
Bowman's Butcher Shop, LLC

[Redacted]

Scott C. Safian, Director
Evaluation and Enforcement Division
Food Safety and Inspection Service
U.S. Department of Agriculture

[Redacted]

Gerald Bowman, Member
Bowman's Butcher Shop, LLC

[Redacted]

[Redacted]

Nicholas A. Johnson, Manager
Bowman's Butcher Shop, LLC

Margaret A. Burns Rath
Attorney for Complainant
United States Department of Agriculture
Office of the General Counsel

Issued this 29th day of August 2012

in Washington, D.C.

[Redacted]

ADMINISTRATIVE LAW JUDGE