

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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CALIFORNIA

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In re:

Abner Snack Foods, Inc.,  
and Benjamin D. Abner

Respondents

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FMIA Docket No.

13-0192

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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 Abner Snack Foods, Inc., and Mr. Benjamin D. Abner, 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. 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. Abner Snack Foods, Inc., Respondent Corporation, engages in the slaughter of livestock and processing of meat and meat food products at the establishment located at 27926 School Street, Bell City, Missouri, 63735.

2. Respondents, on December 6, 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 Bell City, Missouri.

3. Respondent Benjamin D. Abner is identified in said application as Vice President of Abner Snack Foods, Inc.

4. On or about May 25, 2010, in the Chesapeake Circuit Court, Criminal Division, First Judicial Circuit of Virginia, Respondent Benjamin D. Abner was convicted of one felony count of grand larceny.

### **Conclusion**

Because the parties have agreed to the provisions set forth in this 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 two (2) years beginning on the effective date of this Order. This refusal to provide inspection services shall be held in abeyance, and conditional Federal 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. Respondents and any of the Respondents' partners, employees, agents or affiliates shall not:

(a) violate any section of the FMIA, the Poultry Products Inspection Act, as amended (21 U.S.C. §§ 451 et seq.) ("PPIA"), the Egg Products Inspection Act, as amended (21 U.S.C. §§ 1031 et seq.) ("EPIA"), or regulations promulgated thereunder, or 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.

### **Ethics Training and Corporate Code of Conduct**

3. Within sixty (60) calendar days from the effective date of this Order, Respondents shall develop and submit for review by the Director, Evaluation and Enforcement Division, of the Office of Program Evaluation, Enforcement and Review, FSIS, (hereinafter, "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.

4. Within ninety (90) calendar days from the effective date of this Order, Respondent Benjamin D. Abner shall participate in and successfully complete a training program or educational course encompassing ethical business practices that has received prior concurrence from the Director, EED. 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 upon request.

### **Recordkeeping Provisions**

5. Respondents shall record and maintain complete and accurate written records of

(a) all records required to be maintained by the FMIA, PPIA, and EPIA, and implementing regulations; and

(b) all records required by this Order.

6. 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**

7. 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**

8. 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.

9. 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**


10. 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 9 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.


11. This Order shall be applicable for a period of two years, beginning on the effective date of this Order.


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

13. 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.

  
Johathan Abner, President  
Abner Snack Foods, Inc.

  
Benjamin D. Abner, Vice President  
Abner Snack Foods, Inc.

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

  
Brian P. Sylvester  
Attorney for Complainant  
United States Department of Agriculture  
Office of the General Counsel

Issued this 13<sup>th</sup> day of March 2013

in Washington, D.C.

  
ADMINISTRATIVE LAW JUDGE

13-092