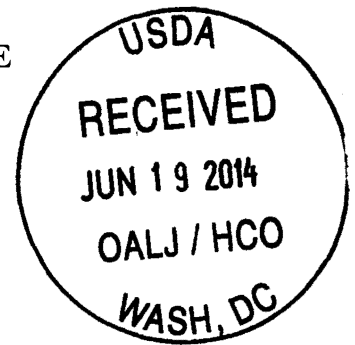


**UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE**

Docket No. 14-0094  
Docket No. 14-0095



In re:

PAUL ROSBERG  
and NEBRASKA'S FINEST MEATS, L.L.C.

Respondents.

Appearances:

Lisa Jabaily, Esq. for Complainant

Paul Rosberg, Pro se Respondents

Before:

Janice K. Bullard, Administrative Law Judge

**DECISION AND ORDER ON THE RECORD**

The instant matter involves a complaint filed by the United States Department of Agriculture ("Complainant"; "USDA") against Paul Rosberg and Nebraska's Finest Meats, L.L.C. ("Respondents"), alleging violations of the administration of the Federal Meat Inspection Act ("FMIA"; "the Act"). Complainant seeks an Order indefinitely suspending inspection service by the Food Safety Inspection Service ("FSIS") of any of Respondents' business operations.

**I. PROCEDURAL HISTORY**

On April 11, 2014, Complainant filed the complaint alleging violations of the FMIA. On May 7, 2014, Respondent Paul Rosberg filed a response on behalf of both Respondents and requested a continuance of the matter pending the results of an appeal of his guilty plea in a

criminal matter related to this administrative proceeding. On May 14, 2014, Complainant objected to the continuance. On May 19, 2014, Complainant filed a motion for a Decision without Hearing by Reason of Admissions<sup>1</sup>. On June 10, 2014, Respondent filed an objection to Complainant's motion.

## II. ISSUES

1. Whether a Decision and Record on the Hearing should be issued, and if so;
2. Whether Respondents should be suspended from inspection under FMIA.

## III. FINDINGS OF FACT & CONCLUSIONS OF LAW

### A. Discussion

Pursuant to the Rules of Practice Governing Formal Adjudications Before the Secretary [of U.S.D.A.], 7 C.F.R. §§ 1.31 et seq. (the Rules), Respondents are required to file an answer within twenty days after the service of a complaint. 7 C.F.R. §1.136(a). Failure to file a timely answer or failure to deny or otherwise respond to an allegation in the Complaint shall be deemed admission of all the material allegations in the Complaint, and default shall be appropriate. 7 C.F.R. § 1.136(c).

7 C.F.R. § 1.1.39 provides, in pertinent part:

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 day after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing...

7 C.F.R. § 1.1.39.

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<sup>1</sup> I note that Respondent's answer was not timely and the entry of default would be permitted pursuant to 7 C.F.R. §1.139. However, in this matter, I concur that a Decision on the Record is appropriate.

Further, an administrative law judge may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery, or other materials show that there is no genuine issue as to any material fact. Veg-Mix, Inc. v. United States Dep't of Agric., 832 F.2d 601, 607 (D.C. Cir. 1987) (affirming the Secretary of Agriculture's use of summary judgment under the Rules and rejecting Veg-Mix, Inc.'s claim that a hearing was required because it answered the complaint with a denial of the allegations.)

In his answer filed May 7, 2014, Paul A. Rosberg asserted that he was 100% owner of the business, denied the allegations to which he had pleaded guilty, and asked that the matter be suspended pending a decision on his petition to dismiss the plea. In support of its motion for a Decision on the Record, Complainant filed a copy of Respondent Paul Rosberg's Plea Agreement (Complainant's exhibit "A"); a copy of felony conviction and Judgment against Respondent Paul Rosberg (Complainant's exhibit "B"); a copy of the cover of Respondent Paul Rosberg's motion to set aside the plea and judgment (Complainant's exhibit "C"); Memorandum and Order by Senior U.S. District Court Judge Richard G. Kopf, denying Respondent Paul Rosberg's motion (Complainant's exhibit "D"). In his response to Complainant's motion filed herein, Respondent Paul Rosberg again asserted that his conviction was invalid, and he asked the instant proceeding be stayed pending the results of his request for reconsideration of Judge Kopf's Order.

I find that there is no dispute of the facts in this matter, and that no purpose would be served to delay the disposition of this case until Respondent Paul Rosberg's criminal appeals are exhausted. Mr. Rosberg's avenue of appeal is narrow, since his conviction was obtained through his guilty plea. The presiding judge in the criminal action has found the plea to be voluntary and knowing and denied his motion to set aside the plea with prejudice. The subject of the criminal

action involved Respondent Paul Rosberg's selling of misbranded meat to Omaha Public Schools. Respondent admitted to intentionally mislabeling meat as federally inspected when it had not been inspected by FSIS.

The primary purpose of the FMIA is to protect public health, and to that end, only individuals deemed fit to be inspected by FSIS may engage in business subject to the FMIA. 21 U.S.C. § 602. See, In re: Apex Meat Company, 44 Agric. Dec. 1855, 1872 (1985). The Secretary of USDA determined that the 'fitness' of individuals may be determined by characteristics of "honesty, dependability, and integrity". Id. at 1869. Respondent Paul Rosberg's criminal conduct involving his activities regulated by FSIS demonstrate that he lacks the trustworthiness, honesty, and integrity required to assure that his products are safe within the understanding of the FMIA.

The Secretary of USDA is authorized to withdraw inspection service from any business where anyone responsibly connected with the business has been convicted of any felony. 21 U.S.C. § 671; 9 C.F.R. § 500.6(i). An individual is deemed responsibly connected if he or she is a partner, officer, director, holder, or owner of 10% or more of its voting stock or employee in a managerial or executive capacity. 21 U.S.C. § 671.

Respondents admitted that they were subject to inspection, and Respondent Paul Rosberg asserted that he owned 100% of the corporate entity. Respondent Paul Rosberg pleaded guilty to a felony involving the handling of meat and is unfit to engage in a business requiring inspection services. Paul Rosberg is responsibly connected to Nebraska's Finest Meats, L.L.C., and the indefinite withdrawal of USDA inspection services from Nebraska's Finest Meats, L.L.C, and its

affiliates, officers, operators, partners, successors, or assigns is an appropriate sanction. This sanction is consistent with sanctions imposed in other cases involving felony convictions<sup>2</sup>.

I find that Respondent's wife, Kelly Rosberg, while not a Respondent herein, has admitted to being the manager of the business in an affidavit provided to USDA. See, Affidavit of Kelly Rosberg, ALJ exhibit 1. Accordingly, as an employee in a managerial capacity, I find her responsibly connected with a business whose owner is unfit to receive the inspection services of FSIS. Therefore, it is appropriate to indefinitely withdraw those services from Kelly Rosberg.

A. Findings of Fact

1. Nebraska's Finest Meats, L.L.C., is now and was at all times material to this adjudication, a corporation with a business address in Wausau, Nebraska.
2. Respondent Paul A. Rosberg at all times material hereto is and was at least a 50% owner of that Nebraska's Finest Meats, L.L.C.
3. Respondents' business operated under a grant of federal inspection pursuant to FMIA at all times material hereto.
4. Kelly Rosberg was and is the manager of Nebraska's Finest Meats.
5. On September 27, 2013, in the United States District Court for the District of Nebraska, Respondent Paul A. Rosberg pleaded guilty to a felony, Sale of Misbranded Meat and Meat Products; Aiding and Abetting, in violation of 21 U.S.C. § 610(c)(1) and 18 U.S.C. § 2.
6. Respondent admitted to violating FMIA as part of a guilty plea to a criminal indictment alleging criminal activity involving the sale of meat and meat products

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<sup>2</sup> See, e.g., In re: Norwich Beef Company, 38 Agric. Dec. 380 (1979); Utica Packing Co. v. Block, 781 F.2d 71, 78 (6<sup>th</sup> Cir. 1986); In re: Great American Veal Company, Inc., 45 Agric. Dec. 1770 (1986).

7. Judgment in the criminal action, United States v. Paul Rosberg, Case No. 8:12CR271-001 was entered on December 27, 2013.
8. On May 9, 2014, U.S. Senior District Court Judge Richard G. Kopf denied and dismissed with prejudice Respondent Paul A. Rosberg's motion to set aside the guilty plea.

B. Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent Paul Rosberg was and is at all times relevant herein responsibly connected with the Respondent Corporation, Nebraska's Finest Meats, L.L.C.
3. Kelly Rosberg, as manager and operator of the business, is responsibly connected with the Respondent Corporation.
4. Respondent Paul Rosberg committed a felony which demonstrates his lack of integrity to conduct operations that affect the public safety.
5. Respondent Paul Rosberg is unfit to engage in any business requiring inspection under Title I of the FMIA, pursuant to 21 U.S.C. § 671.
6. Because Paul Rosberg is at least 50% owner of Nebraska's Finest Meats, L.L.C. that entity is unfit to engage in any business requiring inspection under Title I of the FMIA, pursuant to 21 U.S.C. § 671.
7. The indefinite withdrawal of USDA inspection services from Respondent Paul Rosberg and Nebraska's Finest Meats, L.L.C, their affiliates, officers, operators, partners, successors, or assigns is an appropriate sanction.
8. The indefinite withdrawal of USDA inspection services from Kelly Rosberg is also appropriate as she was and is the manager and operator of Nebraska's Finest at all

times material hereto, and is responsibly connected to a business whose owner is unfit to receive inspection services.

### ORDER


Inspection services are hereby indefinitely withdrawn from Respondents Nebraska's Finest Meats, L.L.C and Paul Rosberg. This sanction extends by association to Kelly Rosberg, manager of Nebraska's Finest Meats, and inspection services are hereby indefinitely withdrawn from Kelly Rosberg.

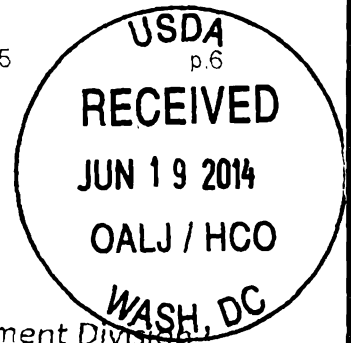
The provisions of the Order shall become effective on the sixth day after service of this Decision and Order on Respondents.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision and Order shall become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

The Hearing Clerk shall serve copies of this Decision and Order upon the parties and also upon Kelly Rosberg.

So ORDERED this 19th day of June, 2014, in Washington, D.C.

  
Janice K. Bullard  
Administrative Law Judge



10/17/2011

To: Mr. Haroon Mian and the Director of Evaluation and Enforcement Division

Response to: Notice of Suspension dated October 13, 2001

**AFFIDAVIT**

**COUNTY OF** Knox

**STATE OF NEBRASKA**

Kelly Rosberg, I am the manager and operator of Nebraska's Finest Meats

**The Main point of this suspension was: interference or intimidation or threatening a government employee. These government employees were not threatened or interfered with during their public health responsibilities under the law, as they were not on official business, but were harassing us during operational times for something that they completed and untagged the prior day. Broberg's and Jacobsen's accounts are distorted in many places and are simply untrue. We can show a pattern of harassment from Jacobsen which is carried out through the help of Broberg and Ridgeway.**

This is my personal account of what happened:

ALJX-1



On October 6, 2011, I got a call from an employee and was informed that a freezer was not working and the repairman was called. Temperatures of the meat were taken and ranged from a high of 39 degrees and low of mid 20 degree Fahrenheit. I was advised by John Ridgeway to call Mr. Kumpost give the details of the problem to him to see what needed to be done to get the rejection tag removed.

Upon talking to Mr. Kumpost (EIOE), he stated, he thought it sounded like an isolated incidence and that he did not see any food safety issues. Kompost stated the only problem was going to be getting the tag off before Tuesday as Monday was a federal holiday. October 6, 2011, Ridgeway spent the rest of the afternoon counting boxes, supposedly taking an inventory.

On Tuesday morning of October 10<sup>th</sup>, it was tagged a second time. Inspector John Ridgeway somehow thought that we had removed product over the weekend. I explained to him, that the repair man had to come back over the weekend because the temperature was still not down to zero. I informed Ridgeway that the repair man may have moved boxes to get to the fans that were froze up. He did not believe this, so the freezer was inventoried again by him and two other government officials. I answered questions and provided documents to the EIOE

person Jeff Jacobsen from twelve to five pm regarding Federal and custom production that took place in the past six months. **At the end of the day I was informed that they could not verify that any product was missing and that the tags were removed.** At that time I was informed; a few boxes that said "not for sale" on them were questionable because they had unlabeled packages in them.

The next day I was gone, but my husband called and said Broberg, Ridgeway, and Jacobson were back because the inspector John Ridgeway had a gut feeling while in his bathtub the previous night that there might be meat miss labeled in that freezer. My husband was disappointed because he was told to dispose of perfectly good product. This was not the first time, inspector Ridgeway had decided that some custom products, that were in a tray in our sharp freezer were in there too long and told an employee to throw them out. She threw away perfectly good meat of one of our customers an attempt to prevent problems with the inspector.

On Wednesday October 12<sup>th</sup>, my husband called me and asked me to come to work to try to find out what was going on. At that time I asked to speak to John Ridgeway. He refused. Then I asked to speak to Dr. Broberg. I asked him what the problem was. He stated he was not finished with his investigation into missing

product. I was upset and told him if he did not have a written complaint I felt he should get out of my freezers and stop harassing my helpers and let my employees do their work. We had lost too much time and money on this harassment the way it was. We had 800 pounds of beef partly thawed out to be repackaged and due to their harassment we had to rebox and refreeze it and lost a \$2600 order. I do not believe I ever said "get the hell out of my freezer". I did ask Broberg to leave if he did not have a written complaint on this. I am certain we are being harassed. I am 9 months pregnant and I am supposed to be resting per doctors orders to keep my blood pressure down to prevent preterm labor. I did tell Dr. Broberg that if I lost my baby because of all this harassment, I would file a lawsuit against him and whoever was responsible. **I do not believe they were on official business after the tags were removed, or after they went through my files for hours and found nothing wrong.**

Broberg and Ridgeway were gone when I returned to the locker plant. Jeff Jacobsen was still there when I returned from the doctor. When I came into the front room, from outside, Jacobsen had just opened the door from the processing room into the front room. Paul was sitting at his desk in the northwest corner. Jacobsen stated "he had not found anything wrong and he was going to leave." I tried to explain to him why I was so frustrated with all of this and why I thought

they were being bullies. Then Paul attempted to ask Jacobsen a question. Jacobsen did not answer, so my husband asked again and again getting louder. Paul Rosberg does not hear well. My husband **DID NOT** call Jacobsen any foul names or threaten him in any way. Then Jacobsen told Paul if he did not tone down his voice he was going to call the police. At this time, I told my husband it would be best to drop it, and move on. Jacobsen left shortly thereafter.

The next day the employees called and said someone called from the Des Moines office and said "we were now on Notice of Suspension ". Paul called me from his cell phone and told me someone had called him from a 712 number but he couldn't understand what he was saying because the caller couldn't speak English.

The following is true and correct to the best of my knowledge and belief.  
Dated this 18<sup>th</sup> day of October, 2011.

[REDACTED]  
Kelly Rosberg

Subscribed and sworn to in my presence by Kelly Rosberg this 18<sup>th</sup> day of October, 2011.

[REDACTED]  
Notary Public

