

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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Docket No. 16-0006 (FMIA)

In re:

JARED L. FRY,

Respondent.

DECISION AND ORDER BY REASON OF DEFAULT

I. PRELIMINARY STATEMENT

The instant matter involves allegations by the Administrator of the Food Safety and Inspection Service of the United States Department of Agriculture (“FSIS”; “USDA”; “Complainant”) that Jared L. Fry¹ (“Respondent”) violated provisions of the Federal Meat Inspection Act as amended and supplemented, 21 U.S.C. § 601 et. seq.

II. ISSUES

1. Whether entry of default Decision and Order is appropriate, and if so;
2. Whether Complainant’s recommended action should be imposed.

III. PROCEDURAL HISTORY

On October 7, 2015, Complainant filed a complaint with the Hearing Clerk, Office of Administrative Law Judges (“OALJ”; “Hearing Clerk”), alleging that Respondent had violated the Act. On October 8, 2015, the Hearing Clerk sent a copy of the complaint to Respondent by certified and regular mail. The complaint was accompanied by correspondence that informed Respondent that an Answer should be filed pursuant to the Rules of Practice Governing Formal Adjudications before the Secretary of USDA (“the Rules of Practice”). The certified mail return

¹ The complaint identified “D & H Meats, LLC” as an additional Respondent, but service was not perfected against that entity. The complaint was recently sent by regular and certified mail to the business address for D & H Meats, LLC.

receipt was returned to the Hearing Clerk on December 12, 2015, with the signature of “Jennifer Fry” acknowledging receipt of the complaint and correspondence on October 14, 2015.

Respondent did not file an answer. By Order issued December 22, 2015, I directed Respondent to show cause why a Decision and Order by reason of default should not be entered. On January 7, 2016, Complainant filed a motion for a Decision and Order by reason of default. The Hearing Clerk sent the motion to Respondent by certified and regular mail on February 22, 2016. The online tracking system for the United States Postal Service indicates that on February 27, 2016, the mailing was picked up at a post office in Respondent’s city of Vanlue, Ohio. Respondent did not file an objection to the motion.

IV. AUTHORITIES

1. Default

Pursuant to the Rules of Practice, a respondent is required to file an Answer within twenty (20) days after service of a Complaint. 7 C.F.R. § 1.136(a). The Rules of Practice also provide that an Answer “shall . . . [c]learly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent.” 7 C.F.R. § 1.136(b)(1). The failure to timely file an Answer or failure to deny or otherwise respond to an allegation proffered in the Complaint shall be deemed admission of all the material allegations in the Complaint; in such situation, default shall be appropriate. 7 C.F.R. § 1.136(c).

The Rules of Practice also provide that a document sent by the Hearing Clerk “shall be deemed to be received by any party to a proceeding . . . on the date of delivery by certified or registered mail. . .” 7 C.F.R. § 1.147(c)(1). The Rules of Practice state that “[t]he failure to file an answer . . . shall constitute a waiver of the hearing. Upon such. . . failure to file, complainant shall file a proposed decision along... Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto.” 7 C.F.R. § 1.139.

2. Ohio Revised Code Title [9] IX AGRICULTURE - ANIMALS - FENCES Chapter 918: MEAT INSPECTION

§ 918.11 Prohibited acts - fines.

(A) No carcass, parts thereof, or meat products shall be stamped or otherwise identified with an official mark unless the carcass, parts, or products have been so identified at an establishment licensed under division (A) of section 918.08 of the Revised Code.

(B) No person shall offer for sale or sell meat or meat products that have not been inspected in compliance with sections 918.01 to 918.11 of the Revised Code.

(C) No person shall knowingly offer for sale or sell adulterated meat or meat products that are detrimental to public health and safety.

(D) All fines and penalties recovered for violating this section shall be deposited into the poultry and meat products fund created in section 918.15 of the Revised Code.

§ 918.04 Rules to administer meat inspection.

The director of agriculture shall, in accordance with Chapter 119 of the Revised Code, adopt and enforce rules that are necessary to administer sections 918.01 to 918.11 of the Revised Code. The rules shall meet or exceed the federal standards for meat inspection established in Title 9 of the Code of Federal Regulations.

3. Federal Meat Inspection Act, 21 U.S.C. § 671:

The Secretary may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this chapter) refuse to provide, or withdraw, inspection service under subchapter I of this chapter with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under subchapter I because the applicant or recipient, or anyone responsibly connected with the applicant or recipient, has been convicted, in any Federal or State court, of (1) any felony, or (2) more than one violation of any law, other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food or upon fraud in connection with transactions in food. This section shall not affect in any way other provisions of this chapter for withdrawal of inspection services under subchapter I from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts, meat or meat food products.

For the purpose of this section a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of 10 per centum or more of its voting stock or employee in a managerial or executive capacity.

The determination and order of the Secretary with respect thereto under this section shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within thirty days after the effective date of such order in the appropriate court as provided in section 674 of this title. Judicial review of any such order shall be upon the record upon which the determination and order are based.

V. DISCUSSION

The record reflects that service of the complaint and motion for entry of default was perfected pursuant to 7 C.F.R. § 1.147(c). An individual acknowledged receipt of the complaint, and an individual collected the mailing consisting of the motion. By failing to file an Answer to the complaint, Respondent has waived his right to a hearing, and pursuant to 7 C.F.R. § 1.136 (c), Respondent is hereby deemed to have admitted the allegations set forth in the complaint. Entry of Decision and Order by reason of default and admissions is appropriate, pursuant to 7 C.F.R. §1.139. Complainant's proposed action is warranted.

VI. FINDINGS OF FACT

1. On or about April 6, 2015, Respondent Jared L. Fry applied for federal meat inspection services for his business, D & H Meats, LLC, located in Vanlue, Ohio.
2. Respondent is the sole owner of and is responsibly connected to D & H Meats, LLC.
3. On January 12, 2015, Respondent entered a plea of "no contest" to charges of violations of (1) Meat Inspection/Prohibition, ORC 918.11 and (2) Rules to Administer Meat Inspection, ORC 918.04. *State of Ohio v. Jared L. Fry*, Case No. 2014-CRB-1050-A, B & C, Findlay Municipal Court.
4. The court entered judgment on the plea and Ordered Respondent to pay a fine of \$500.00 and court costs.

VII. CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.

2. Default Decision and Order is appropriate, and Respondent is deemed to have admitted the allegations set forth in the complaint.
3. Respondent's violation of the Ohio Revised Code, Chapter 19, Meat Inspection, supports the Secretary's determination that Respondent is unfit to engage in any business requiring federal inspection services under Title I of the FMIA, pursuant to 21 U.S.C. § 671.

ORDER

Respondent Jared L. Fry is unfit to engage in any business requiring inspection services and the Secretary of Agriculture may refuse to provide federal inspection services to Respondent under Title 1 of the FMIA.

Pursuant to the Rules of Practice, this Decision becomes final without further proceedings 35 days after service, in accordance with 7 C.F.R. §§ 1.142 and 1.145. The provisions of this Order shall become effective on the first day of the month after this Decision shall become final.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk.

So ORDERED this 22nd day of April, 2016, at Washington, D.C.



Janice K. Bullard
Administrative Law Judge