

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: ) P. & S. Docket No. 14-0095  
 )  
Paul Rosberg and )  
Nebraska's Finest Meats, LLC, )  
 )  
Respondents ) **Order Denying Late Appeal**

**PROCEDURAL HISTORY**

Alfred V. Almanza, Administrator, Food Safety and Inspection Service, United States Department of Agriculture [Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on April 11, 2012. The Administrator instituted the proceeding under the Federal Meat Inspection Act, as amended (21 U.S.C. §§ 601 et. Seq.) [hereinafter, FMIA] and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151).

On or about August 5, 2009, Respondents began operating under a grant of federal inspection pursuant to FMIA. Paul Rosberg has admitted that he was at least a 50 percent owner of Nebraska's Finest Meats, LLC, at all times. On or about

October 13, 2011, FSIS suspended inspection service, in accordance with Section 500.5 of Title 9 of the Code of Federal Regulations (9 CFR 500.5) based on Respondent's acts of intimidating and interfering with FSIS program personnel engaged in the performance of official statutory and regulatory duties under the FMIA.

On January 18, 2012, Complainant filed a complaint (Docket No. 12-0182) seeking an order continuing the suspension of inspection service under the FMIA indefinitely. On October 18, 2012 during a telephone conference with the parties and Administrative Law Judge Bullard, Respondents requested that the administrative proceeding in Docket No. 12-0182 be postponed until the conclusion of their federal district court proceedings. Complainant did not oppose Respondents' motion. On October 24, 2012 Judge Bullard issued an Order Suspending Action.

On September 27, 2013, in United States District Court for the District of Nebraska, Respondent Paul Rosberg pled 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. Judgment was entered on December 27, 2013.

The Hearing Clerk served Paul Rosberg with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter on April 18, 2014<sup>1</sup> alleging Respondent was unfit to engage in any business requiring federal inspection service because of a felony conviction under Title I of the FMIA. The Hearing Clerk also served Nebraska Finest Meats, LLC and Kelly Rosberg with the same Complainant, Rules of Practice, and Hearing Clerk's letter signed for by Kelly Rosberg on May 7, 2014.<sup>2</sup> Respondent filed an answer to the Complaint on May 7, 2014 requesting a continuance until his appeal was heard.<sup>3</sup>

On May 14, 2014, the Administrator filed an Opposition to the Motion to Continue based on the fact that the District Court denied and dismissed with prejudice Respondent's motion to vacate his guilty plea on May 9, 2014. The District Court's dismissal was non-appealable. Further, the Eighth Circuit also denied Respondent's appeal of his conviction on May 1, 2014.

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<sup>1</sup>United States Postal Service Domestic Return Receipts for article numbers 7003 1010 0001 7367 4602.

<sup>2</sup> Kelly Rosberg has admitted to being the manager and operator of Nebraska's Finest Meats (see affidavit given October 18, 2011). United States Postal Service Domestic Return Receipts for article numbers 7003 1010 0001 7367 4619 and 7003 1010 0001 7367 4626.

<sup>3</sup> Paul Rosberg also asserts in his answer that he owns 100% of Nebraska's Finest Meats, LLC

On May 19, 2014, the Administrator filed a Motion for Decision without Hearing pursuant to FMIA. Under FMIA, a person is deemed to be responsibly connected to a business if he 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). Respondent has admitted that he is responsibly connected to Respondent Corporation within the meaning of the FMIA. Respondent has also admitted, in a plea agreement, to committing the felony of the sale of misbranded meat products. Respondents did not raise a valid defense to the Complainant so pursuant to Section 1.139 of the Rules of Practice Governing Formal Adjudicatory Proceedings instituted by the Secretary under Various Statutes ( the "Rules of Practice" ) ( see 7 C.F.R. § 1.130 et seq. ), Complainant requested that a decision and order be entered against Respondent.

On May 23, 2014, Paul Rosberg received from the Hearing Clerk the Administrator's Motion for Decision without Hearing and the Hearing Clerk's service letter.<sup>4</sup> Kelly Rosberg also received the motion from the Hearing Clerk that she signed for; however,

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<sup>4</sup>United States Postal Service Domestic Return Receipts for article numbers 7003 1010 0001 7367 4831.

the Nebraska Finest Meats, LLC that was sent to the same address as Kelly Rosberg went unclaimed.<sup>5</sup> On June 10, 2014 Respondent Paul Rosberg filed an Objection for Decision without Hearing and a Response.

On June 19, 2014, Administrative Law Judge Bullard [ALJ], in accordance with 7 C.F.R. § 1.131 et seq., issued a Decision and Order [Decision]: (1) Inspection services are indefinitely withdrawn from Respondents' Nebraska's Finest Meats, LLC; (2) Paul Rosberg, Respondent, committed a felony which demonstrates his lack of integrity to conduct operations that affect the public safety and is unfit to engage in any business requiring inspection under Title I of the FMIA, pursuant to 21 U.S.C. § 671<sup>6</sup> On June 23, 2014, the Hearing Clerk served Respondent Paul Rosberg with the ALJ's Decision and the Hearing Clerk's service letter.<sup>7</sup> Respondent Nebraska's Finest Meats was signed for by

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<sup>5</sup> United States Postal Service Domestic Return Receipts for article numbers 7003 1010 0001 7367 4817 and 7003 1010 0001 7367 4824. Under the Rules of Practice 1.147(c)(1) if it is returned unclaimed it shall be deemed to be sent on date sent via regular mail. It was sent regular mail June 16, 2014.

<sup>6</sup>ALJ's Decision at 5 - 7.

<sup>7</sup>United States Postal Service Domestic Return Receipt for article number 7003 1010 0001 7367 4916.

Joe Rosberg on June 30, 2014 and Kelly Rosberg's mailing was returned unclaimed.<sup>8</sup>

On July 28, 2014, the ALJ's Decision and Order became final under the applicable rules of practice as it was not appealed within the allotted time. On July 29, 2014, Nebraska Finest Meats, LLC and Paul Rosberg appealed the ALJ's Decision to the Judicial Officer. On August 6, 2014, the Administrator filed Complainant's Response to Respondents' Appeal of Decision and Order. On August 12, 2014, Respondent sent a Petition for Reconsideration.

On August 6, 2014, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

#### **CONCLUSIONS BY THE JUDICIAL OFFICER**

The Rules of Practice provide that an administrative law judge's written decision must be appealed to the Judicial Officer

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<sup>8</sup> United States Postal Service Domestic Return Receipt for article number 7003 1010 0001 7367 4893 and 7003 1010 0001 7367 4909. Under the Rules of Practice 1.147(c)(1) if it is returned unclaimed it shall be deemed to be sent on date sent via regular mail.

by filing an appeal petition with the Hearing Clerk within 30 days after service.<sup>9</sup> The Hearing Clerk served Nebraska's Finest Meats, LLC and Paul Rosberg with the ALJ's Decision on June 23, 2014.<sup>10</sup> Paul Rosberg claimed that he was 100% owner in his answer to Complainant on May 7, 2014. So even though some mail has gone unclaimed by Kelly Rosberg and Nebraska Finest Meats, LLC, Paul Rosberg, as claimed sole owner, has received all mailings. Therefore, Respondents' were required to file their appeal petition with the Hearing Clerk no later than July 23, 2014. Instead, Respondents' filed their appeal petition with the Hearing Clerk on July 29, 2014. Therefore, I find Nebraska's Finest Meats, LLC and Paul Rosberg's appeal petition is late-filed.

Moreover, the Judicial Officer has continuously and consistently held under the Rules of Practice that the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision and order becomes final.<sup>11</sup>

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<sup>9</sup>7 C.F.R. § 1.145(a).

<sup>10</sup>See note 7.

<sup>11</sup>See, e.g., *In Piedmont Livestock, Inc.* (Order Denying Late Appeal), \_\_Agric. Dec.\_\_(April 29, 2013)(dismissing the respondents' appeal petition filed 1 and 3 days,

The ALJ's Decision became final 35 days after the Hearing Clerk served Nebraska's Finest Meats, LLC and Paul Rosberg with the ALJ's Decision.<sup>12</sup> Thus, the ALJ's Decision became final on July 28, 2014. Respondents filed their appeal petition on July 29,

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respectively, after chief administrative law judge's decision became final); *In re Custom Cuts, Inc.* (Order Denying Late Appeal), \_\_\_ Agric. Dec. \_\_\_ (Feb. 20, 2013) (dismissing the respondents' appeal petition filed 1 month 27 days after the chief administrative law judge's decision became final); *In re Robert M. Self* (Order Denying Late Appeal), \_\_\_ Agric. Dec. \_\_\_ (Sept. 24, 2012) (dismissing the respondent's appeal petition filed 18 days after the chief administrative law judge's decision became final); *In re Timothy Mays* (Order Denying Late Appeal), 69 Agric. Dec. 631 (2010) (dismissing the respondent's appeal petition filed 1 week after the administrative law judge's decision became final); *In re David L. Noble* (Order Denying Late Appeal), 68 Agric. Dec. 1060 (2009) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision became final); *In re Michael Claude Edwards* (Order Denying Late Appeal), 66 Agric. Dec. 1362 (2007) (dismissing the respondent's appeal petition filed 6 days after the administrative law judge's decision became final); *In re Tung Wan Co.* (Order Denying Late Appeal), 66 Agric. Dec. 939 (2007) (dismissing the respondent's appeal petition filed 41 days after the chief administrative law judge's decision became final); *In re Tim Gray* (Order Denying Late Appeal), 64 Agric. Dec. 1699 (2005) (dismissing the respondent's appeal petition filed 1 day after the chief administrative law judge's decision became final); *In re Jozset Mokos* (Order Denying Late Appeal), 64 Agric. Dec. 1647 (2005) (dismissing the respondent's appeal petition filed 6 days after the chief administrative law judge's decision became final); *In re Ross Blackstock* (Order Denying Late Appeal), 63 Agric. Dec. 818 (2004) (dismissing the respondent's appeal petition filed 2 days after the administrative law judge's decision became final); *In re David Gilbert* (Order Denying Late Appeal), 63 Agric. Dec. 807 (2004) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision became final); *In re Vega Nunez* (Order Denying Late Appeal), 63 Agric. Dec. 766 (2004) (dismissing the respondent's appeal petition filed on the day the administrative law judge's decision became final).

<sup>12</sup>See 7 C.F.R. § 1.139; ALJ's Decision at 7.

2014. Therefore, I have no jurisdiction to hear Nebraska's Finest Meats, LLC and Paul Rosberg's appeal petition.

The Rules of Practice do not provide for an extension of time (for good cause or excusable neglect) for filing an appeal petition after an administrative law judge's decision has become final. The absence of such a provision in the Rules of Practice emphasizes that jurisdiction has not been granted to the Judicial Officer to extend the time for filing an appeal after an administrative law judge's decision has become final. Therefore, under the Rules of Practice, I cannot extend the time for Nebraska's Finest Meats, LLC and Paul Rosberg to file an appeal petition after the ALJ's Decision became final.

Accordingly, Nebraska's Finest Meats, LLC and Paul Rosberg's appeal petition must be denied. For the foregoing reasons, the following Order is issued.

#### **ORDER**

1. Nebraska's Finest Meats, LLC and Paul Rosberg's appeal petition, filed July 29, 2014, is denied.

2. The ALJ's Decision, filed June 19, 2014, is the final decision in this proceeding.

Done at Washington, DC

September 3, 2014

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William G. Jenson  
Judicial Officer