

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	FMIA Docket No. 14-0094
)	FMIA Docket No. 14-0095
Paul Rosberg and)	
Nebraska's Finest Meats, L.L.C.,)	
)	
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, 2014. The Administrator instituted the proceeding under the Federal Meat Inspection Act, as amended (21 U.S.C. §§ 601-695) [Federal Meat Inspection Act]; 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) [Rules of Practice].

The Administrator alleges: (1) on September 27, 2013, in the United States District Court for the District of Nebraska, Paul Rosberg pled guilty to a felony (the sale of misbranded meat and meat products and aiding and abetting, in violation of 21 U.S.C. § 610(c)(1) and 18 U.S.C. § 2); and (2) on December 27, 2013, judgment was entered against Mr. Rosberg.¹ The Administrator avers Mr. Rosberg and Nebraska's Finest Meats, L.L.C., are unfit to engage in any business requiring federal inspection services under Title I of the Federal Meat Inspection

¹Compl. ¶ II at 2.

Act, pursuant to 21 U.S.C. § 671.² On May 7, 2014, Mr. Rosberg filed an Answer to Complaint on behalf of himself and Nebraska's Finest Meats, L.L.C. Mr. Rosberg asserts he is the 100 percent owner of Nebraska's Finest Meats, L.L.C., admits he was convicted of violating 21 U.S.C. § 610(c)(1), and requests a continuance of this proceeding pending the conclusion of proceedings for judicial review of his conviction of violating 21 U.S.C. § 610(c)(1).

On May 19, 2014, pursuant to 7 C.F.R. § 1.139, the Administrator filed a Motion for Decision Without Hearing requesting entry of an order withdrawing federal inspection services from Mr. Rosberg, Nebraska's Finest Meats, L.L.C., and their affiliates, successors, and assigns, based upon Mr. Rosberg and Nebraska's Finest Meats, L.L.C.'s admissions of the factual allegations of the Complaint and their failure to assert any valid defense to the Complaint.³ On June 10, 2014, Mr. Rosberg and Nebraska's Finest Meats, L.L.C., filed a response to the Administrator's Motion for Decision Without Hearing again admitting Mr. Rosberg's conviction of violating 21 U.S.C. § 610(c)(1) and requesting a continuance of this proceeding pending the conclusion of proceedings for judicial review of his conviction of violating 21 U.S.C. § 610(c)(1).

On June 19, 2014, Administrative Law Judge Janice K. Bullard [ALJ] filed a Decision and Order on the Record [Decision] indefinitely withdrawing federal inspection services from Mr. Rosberg, Nebraska's Finest Meats, L.L.C., and Kelly Rosberg, manager of Nebraska's Finest Meats, L.L.C.⁴

²Compl. ¶ III at 2.

³Mot. for Decision Without Hearing at 10-11.

⁴ALJ's Decision at 7.

The Hearing Clerk served Mr. Rosberg with the ALJ's Decision on June 23, 2014.⁵ On July 29, 2014, Mr. Rosberg appealed the ALJ's Decision to the Judicial Officer on behalf of himself and Nebraska's Finest Meats, L.L.C. On August 6, 2014, the Administrator filed Complainant's Response to Respondents' Appeal Petition. 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 by filing an appeal petition with the Hearing Clerk within 30 days after service.⁶ The Hearing Clerk served Mr. Rosberg with the ALJ's Decision on June 23, 2014;⁷ therefore, Mr. Rosberg and Nebraska's Finest Meats, L.L.C., were required to file their appeal petition with the Hearing Clerk no later than July 23, 2014. Instead, Mr. Rosberg and Nebraska's Finest Meats, L.L.C., filed their appeal petition with the Hearing Clerk on July 29, 2014. Therefore, I find Mr. Rosberg and Nebraska's Finest Meats, L.L.C.'s appeal petition is late-filed.

⁵United States Postal Service Product & Tracking Information for 7003 1010 0001 7367 4916.

⁶7 C.F.R. § 1.145(a).

⁷See note 5.

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 becomes final.⁸ The ALJ's Decision became final 35 days after the Hearing Clerk served Mr. Rosberg with the ALJ's Decision.⁹ Thus, the ALJ's Decision became final on July 28, 2014. Mr. Rosberg and Nebraska's Finest Meats, L.L.C., filed their appeal petition on July 29, 2014. Therefore, I have no jurisdiction to hear Mr. Rosberg and

⁸See, e.g., *In re Piedmont Livestock, Inc.* (Order Denying Late Appeal), ___ Agric. Dec. ___ (Apr. 29, 2013) (dismissing Piedmont Livestock, Inc.'s appeal petition filed 3 days after the chief administrative law judge's decision became final and dismissing Joseph Ray Jones's appeal petition filed 1 day after the 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).

⁹See 7 C.F.R. § 1.139; ALJ's Decision at 7.

Nebraska's Finest Meats, L.L.C.'s appeal petition.

On August 12, 2014, and September 2, 2014, Mr. Rosberg filed replies to Complainant's Response to Respondents' Appeal Petition on behalf of himself and Nebraska's Finest Meats, L.L.C. Mr. Rosberg and Nebraska's Finest Meats, L.L.C., contend they had good cause for filing an appeal petition after the ALJ's Decision became final and contend Mr. Rosberg was wrongfully convicted of violating 21 U.S.C. § 610(c)(1). 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 filing an appeal petition after the ALJ's Decision became final. Accordingly, Mr. Rosberg and Nebraska's Finest Meats, L.L.C.'s appeal petition must be denied.

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Rosberg and Nebraska's Finest Meats, L.L.C.'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 10, 2014

William G. Jenson

Judicial Officer