

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	FMIA Docket No. 12-0182
)	FMIA Docket No. 12-0183
Paul Rosberg and Kelly Rosberg,)	
d/b/a Nebraska's Finest Meats,)	
)	
Respondents)	Order Denying Late Appeal

PROCEDURAL HISTORY

Alfred V. Almanza, Administrator, Food Safety and Inspection Service, United States Department of Agriculture [the Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on January 18, 2012. The Administrator instituted the proceeding under the Federal Meat Inspection Act, as amended (21 U.S.C. §§ 601-695) [the 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) [the Rules of Practice].

The Administrator alleged Respondents intimidated and interfered with Food Safety Inspection Service personnel in violation of the FMIA and sought issuance of an order indefinitely suspending federal inspection service under the FMIA from Respondents and their affiliates, officers, operators, partners, successors, and assigns.¹

¹Compl. at second and third unnumbered pages.

At the time the instant proceeding was pending, Paul Rosberg pled guilty in the United States District Court for the District of Nebraska to 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. § 2.² United States District Judge Richard G. Kopf entered judgment against Mr. Rosberg in the criminal proceeding on December 27, 2013.³ Based upon Mr. Rosberg's conviction, the Administrator instituted another administrative proceeding, FMIA Docket Nos. 14-0094 and 14-0095, against Mr. Rosberg and Nebraska's Finest Meats, L.L.C., alleging they are unfit to engage in business requiring federal inspection service under the FMIA. On June 19, 2014, Administrative Law Judge Janice K. Bullard [the ALJ] issued a decision in FMIA Docket Nos. 14-0094 and 14-0095 indefinitely withdrawing federal inspection service from Mr. Rosberg, Nebraska's Finest Meats, L.L.C., and Kelly Rosberg, manager of Nebraska's Finest Meats, L.L.C.⁴

On July 29, 2014, the ALJ filed a decision in the instant proceeding dismissing this proceeding as moot because the remedy sought by the Administrator in the instant proceeding was previously imposed in *In re Paul Rosberg* (Decision and Order on the Record), __ Agric. Dec. __ (June 19, 2014).⁵

²*United States v. Rosberg* (Plea Agreement), Case No. 8:12CR271 (D. Neb. Sept. 27, 2013).

³*United States v. Rosberg* (Judgment in a Criminal Case), Case No. 8:12CR271-001 (D. Neb. Dec. 27, 2013).

⁴*In re Paul Rosberg* (Decision and Order on the Record), __ Agric. Dec. __, slip op. at 7 (June 19, 2014).

⁵*In re Paul Rosberg* (Decision and Order Dismissing Case as Moot), __ Agric. Dec. __ (July 29, 2014) [the ALJ's Decision].

The Hearing Clerk served Respondents with the ALJ's Decision on August 18, 2014.⁶ On September 23, 2014, Respondents appealed the ALJ's Decision to the Judicial Officer. On October 15, 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.⁷ The Hearing Clerk served Respondents with the ALJ's Decision on August 18, 2014;⁸ therefore, Respondents were required to file their appeal petition with the Hearing Clerk no later than September 17, 2014. Instead, Respondents filed their appeal petition with the Hearing Clerk on September 23, 2014. Therefore, I find Respondents' appeal petition is late-filed.

⁶United States Postal Service Domestic Return Receipt for article number 7012 3460 0003 3833 4177.

⁷7 C.F.R. § 1.145(a).

⁸See note 6.

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.⁹ The ALJ's Decision became final 35 days

⁹See, e.g., *In re West Coast Commodities, LLC* (Order Denying Late Appeal), __ Agric. Dec. __ (Sept. 18, 2014) (dismissing West Coast Commodities' appeal petition filed 187 days after the administrative law judge's decision became final and dismissing Michael Paul Partlow's appeal petition filed 50 days after the administrative law judge's decision became final); *In re Paul Rosberg* (Order Denying Late Appeal), __ Agric. Dec. __ (Sept. 10, 2014) (dismissing the respondents' appeal petition filed 1 day after the administrative law judge's decision became final); *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).

after the Hearing Clerk served Respondents with the ALJ's Decision.¹⁰ Thus, the ALJ's Decision became final on September 22, 2014. Respondents filed their appeal petition on September 23, 2014. Therefore, I have no jurisdiction to hear Respondents' 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 filing an appeal petition after the ALJ's Decision became final. Accordingly, Respondents' appeal petition must be denied.

For the foregoing reasons, the following Order is issued.

ORDER

1. Respondents' appeal petition, filed September 23, 2014, is denied.
2. The ALJ's Decision, filed July 29, 2014, is the final decision in this proceeding.

Done at Washington, DC

November 7, 2014

William G. Jenson
Judicial Officer

¹⁰See 7 C.F.R. § 1.139; ALJ's Decision at 11.