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

Docket No. 12-0216

In re:

PAUL A. ROSBERG,
doing business as
ROSBERG FARM.

Appearances:

Buren Kidd, Esq.,
For Complainant

Paul A. Rosberg,
Pro se Respondent

Before:

Janice K. Bullard
Administrative Law Judge

ORDER DENYING RECONSIDERATION

The instant matter involves a complaint filed by the United States Department of Agriculture (“Complainant”; “USDA”) against Paul A. Rosberg, d/b/a Rosberg Farm (“Respondent”), alleging violations of the Organic Foods Production Act of 1990 (“OFPA”), 7 U.S.C. §§ 6501-6522 and regulations implementing the OFPA and the National Organic Program (“NOP”), set forth at 7 C.F.R. § 205.1 – 205.699. The complaint alleged that Respondent failed to declare on two applications for certification under the NOP that he was previously certified under the NOP. The complaint further alleged that Respondent failed to provide with his applications to NOP copies of noncompliance letters, and failed to describe how compliance had been achieved.

Upon review of all of the evidence and pleadings filed in this matter, I have concluded that there is no genuine issue of material facts, and summary judgment is appropriate.

I. PROCEDURAL HISTORY

On January 26, 2011, Complainant filed a complaint against Respondent alleging violations of the OFPA. On March 30, 2012, Respondent filed a general denial of the allegations and requested additional time to file an answer. By Order issued April 9, 2012, Chief Administrative Law Judge Peter M. Davenport extended the time within which an answer must be filed to May 9, 2012. On April 6, 2014, Respondent again requested additional time.¹ On May 9, 2014, Respondent filed a partial answer and supporting documentation and again requested additional time.

On May 14, 2012, Chief Administrative Law Judge Peter M. Davenport set deadlines for submissions and exchange of evidence. Complainant filed a list of exhibits and witnesses with the Hearing Clerk for the Office of Administrative Law Judges (“OALJ”; “Hearing Clerk”) on June 6, 2012. On July 11, 2012, Respondent filed a document in which he stated that he was not able to comply with the Order for exchange and submissions because he was denied discovery, and requested an Order compelling discovery.² On July 12, 2012, Complainant filed a status report and request for teleconference.

The case was reassigned to me, and on November 2, 2012, I issued an Order staying proceedings in the matter pending the result of actions in federal district court involving Respondent. On May 7, 2013, Complainant filed a Status Report, Request for Hearing and Request for teleconference. By Order issued May 14, 2013, I renewed my stay in this matter

¹ It is likely that Respondent’s second request for an extension of time and the Order granting the request crossed in the mail.

² The Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Initiated by the Secretary [of the United States Department of Agriculture] (“the Rules of Practice”), 7 C.F.R. §§ 1.130 et seq. apply to this proceeding and do not provide for discovery.

pending the results of criminal actions involving Respondent. In a status report filed on December 17, 2013, Complainant advised that Respondent had pled guilty to criminal charges. On December 27, 2013, Respondent was sentenced to imprisonment.

On January 30, 2014, Complainant filed a motion for summary judgment. A copy of the motion was sent by certified mail on January 31, 2014, to Respondent's last known business address by the Hearing Clerk for the Office of Administrative Law Judges. The mail was returned to the Hearing Clerk by the USPS marked as "unclaimed". The motion was then sent to Respondent by regular mail. Respondent failed to file a response to the motion.

On May 14, 2014, a motion filed in another administrative proceeding involving Respondent advised that Respondent's motion for habeas corpus and request to withdraw his guilty plea was denied by Senior United States District Court Judge Richard Kopf. On May 28, 2014, I issued a Decision and Order granting Complainant's motion for summary judgment. A copy of that Decision and Order was sent to the Respondent's last known business address by certified mail on May 28, 2014. That mail was also returned as unclaimed, and a copy was sent to Respondent's last known business address by regular mail.

On May 28, 2014, I vacated my originally issued Decision and Order in order to correct clerical orders, and filed an Amended Decision and Order on Summary Judgment. The Order and the Amended Decision were sent on May 28, 2014, to Respondent at his last known business address, and the mail was again returned to the Hearing Clerk's office as unclaimed.

On August 14, 2014, Respondent filed a motion for reconsideration of my Decision and Order. The motion was deemed by the Hearing Clerk as a request for appeal to the Judicial Officer, and was served on Complainant and Respondent under that nomenclature. Complainant filed a response objecting to Respondent's motion on August 28, 2014, and Respondent filed supplemental documents on September 2, 2014. By Order issued September 9, 2014, I

acknowledged the pleading to be a request for reconsideration of my amended Decision and Order and I denied the motion. On October 1, 2014, Respondent appealed my Decision to the Judicial Officer and requested documents from his file, which were provided by the Hearing Clerk.

By Decision and Order issued September 29, 2014, the Judicial Officer vacated my Decision and Order and remanded the case on the grounds that the Hearing Clerk had failed to properly serve Respondent with the motion for Summary Judgment, as the motion was served to a business address, and not to the address where Respondent was then residing. Although there is no record of notice from the Respondent of the address for receipt of documents, the Judicial Officer gave Respondent the benefit of the doubt and remanded the matter to allow Respondent to address the motion for summary judgment. By Order issued on October 30, 2015, I directed the Hearing Clerk to serve Respondent with the motion at the address he had provided to the Judicial Officer, and directed Respondent to respond to the motion for summary judgment within thirty (30) days from the date of receipt of the motion.

On December 2, 2015, attorney Jason Ravensborg entered his appearance on behalf of Respondent and moved for an extension of time to respond to the motion for summary judgment. By Order issued December 4, 2014, I granted the motion and extended the time to respond to January 9, 2015. On January 20, 2015, Respondent's counsel moved for an additional extension of time. On January 22, 2015, Complainant objected to the motion. By Order issued January 23, 2015, I overruled the objection and granted the motion, extending the time for response to February 13, 2015.

On February 13, 2015, Respondent's counsel filed a response to Complainant's motion for summary judgment. On February 18, 2015, Respondent himself moved for an extension of time and opportunity for a hearing, alleging that he did not get a copy of the motion for summary

judgment until after February 3, 2015. Respondent also requested that I recuse myself. By Order issued February 20, 2015, I denied the motion for recusal and the motion for extension of time to file and answer, but allowed additional time for Respondent to file submissions, notwithstanding the fact that Respondent had filed motions directly, despite the entry of appearance by counsel.

On March 13, 2015, Respondent filed documents. On March 19, 2015, Respondent asked for reconsideration of my Order of February 20, 2015. On March 27, 2015, Complainant filed a submission addressing Respondent's motions. On March 30, 2015, the Hearing Clerk docketed counsel for Respondent's motion to withdraw as counsel, dated March 19, 2015. On April 7, 2015, Respondent moved to dismiss the case, or for an indefinite continuance. On April 14, 2015, Respondent filed a request for summary judgment.

By Decision and Order issued on April 28, 2015, I granted Complainant's motion for summary judgment. On May 21, 2015, Respondent moved for reconsideration of my Decision and Order. On June 8, 2015, Respondent prophylactically filed an appeal³, noting his displeasure that I had not addressed his May 21, 2015 motion. However, according to the Rules of Practice, Complainant has twenty (20) days to respond to a motion, and that time had not elapsed by the date of Respondent's new filing.

Although there remain three days in which Complainant may file a response to the motion, considering Respondent's new filing, I hereby relieve Complainant of the duty to respond and find Respondent's motion ripe for consideration. Therefore, Respondent's filing of this date shall constitute a timely filed appeal of my ruling on the motion for reconsideration.

³ I note that the Rules specifically refer to reconsideration of Decisions of the Judicial Officer (7 C.F.R. §1.146), but no similar pleading is contemplated for Decisions by Administrative Law Judges.

II. RULING

I have again reviewed Complainant's original motion for summary judgment, and submissions by Respondent's counsel and Respondent, as well as his motion for reconsideration, and find no grounds to reverse my original grant of summary judgment in favor of Complainant. Respondent's motion for reconsideration is DENIED.

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

So ORDERED this 9th day of June, 2015, in Washington, D.C.

A solid black rectangular redaction box covering the signature of the Administrative Law Judge.

Janice K. Bullard
Administrative Law Judge