

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) OFPA Docket No. 12-0216
)
Paul A. Rosberg, d/b/a)
Rosberg Farm,)
)
Respondent) **Remand Order**

The Acting Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Administrator], instituted this proceeding by filing a Complaint on January 31, 2012. The Administrator instituted the proceeding under the Organic Foods Production Act of 1990, as amended (7 U.S.C. §§ 6501-6522); the National Organic Program Regulations (7 C.F.R. pt. 205); 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 Paul A. Rosberg failed to declare on applications for organic certification under the National Organic Program that he was previously certified under the National Organic Program and failed to provide copies of previous noncompliance letters or descriptions of how he achieved compliance with the National Organic Program, in willful violation of 7 C.F.R. § 205.401.¹ On May 9, 2012, Mr. Rosberg filed an answer denying the

¹Compl. ¶ II at 3-4.

material allegations of the Complaint.²

²Partial Answer.

On January 30, 2014, the Administrator filed Complainant's Motion for Summary Judgment [Motion for Summary Judgment]. The Hearing Clerk attempted to serve Mr. Rosberg with the Administrator's Motion for Summary Judgment by certified mail at 87288 543rd Avenue, Wausa, Nebraska 68786. The United States Postal Service returned this mailing to the Hearing Clerk marked "unclaimed."³ On March 5, 2014, the Hearing Clerk re-mailed the Administrator's Motion for Summary Judgment by regular mail to Mr. Rosberg at the same address in an attempt to serve Mr. Rosberg in accordance with 7 C.F.R. § 1.147(c)(1).⁴

On May 28, 2014, Administrative Law Judge Janice K. Bullard [ALJ] filed a Decision and Order on Summary Judgment. On May 30, 2014, the ALJ vacated the May 28, 2014, Decision and Order on Summary Judgment⁵ and issued an Amended Decision and Order on Summary Judgment in which the ALJ found Mr. Rosberg had not filed a response to the Administrator's Motion for Summary Judgment and granted the Administrator's Motion for Summary Judgment.⁶

³United States Postal Service Product and Tracking Information for 7012 1010 0002 0093 7197.

⁴Memorandum to the File issued by Jamaal Clayburn, Legal Assistant, Office of the Hearing Clerk, on March 5, 2014.

⁵Order Vacating Decision and Order Issued on May 28, 2014.

⁶Am. Decision and Order on Summ. J. at 2, 11.

The Hearing Clerk attempted to serve Mr. Rosberg with the ALJ's Order Vacating Decision and Order Issued on May 28, 2014, and the ALJ's Amended Decision and Order on Summary Judgment by certified mail at 84288 543rd Avenue, Wausa, Nebraska 68786.⁷ The United States Postal Service returned this mailing to the Hearing Clerk marked "unclaimed."⁸ On June 27, 2014, the Hearing Clerk re-mailed the ALJ's Amended Decision and Order on Summary Judgment to Mr. Rosberg by regular mail at 87288 543rd Avenue, Wausa, Nebraska 68786, in an attempt to serve Mr. Rosberg in accordance with 7 C.F.R. § 1.147(c)(1).⁹

On August 14, 2014, Mr. Rosberg appealed the ALJ's Amended Decision and Order on Summary Judgment to the Judicial Officer.¹⁰ On August 28, 2014, the Administrator filed Complainant's Response to Appellant's Appeal of Amended Decision and Order on Summary Judgment, and on September 2, 2014, Mr. Rosberg filed a supplement to his August 14, 2014, appeal petition.¹¹

On appeal, Mr. Rosberg requests that I vacate the ALJ's Amended Decision and Order on

⁷The record contains no explanation for the Hearing Clerk's mailing the Order Vacating Decision and Order Issued on May 28, 2014, and the Amended Decision and Order on Summary Judgment to 84288 543rd Avenue, Wausa, Nebraska 68786, rather than to 87288 543rd Avenue, Wausa, Nebraska 68786.

⁸United States Postal Service Product and Tracking Information for 7012 1010 0002 0090 9989.

⁹Memorandum to the File issued by Shawn C. Williams, Hearing Clerk, Office of the Hearing Clerk, on July 24, 2014.

¹⁰Motion for Reconsideration: Objection for Decision Without Hearing or Notice of Hearing.

¹¹Supplemental Motion for Reconsideration: Objection for Decision Without Hearing or Notice of Hearing [Supplement to Appeal Petition].

Summary Judgment because he did not have an opportunity to respond to the Administrator's Motion for Summary Judgment. Mr. Rosberg asserts the Hearing Clerk attempted to serve him with the Administrator's Motion for Summary Judgment at his previous address in Wausa, Nebraska, rather than his last known residence in Yankton, South Dakota, as required by 7 C.F.R. § 1.147(c)(1). Mr. Rosberg asserts he informed the Hearing Clerk of his change of address in a letter dated February 26, 2014, a copy of which Mr. Rosberg identified as Exhibit C and attached to his Supplement to Appeal Petition.

The record does not contain an original of Mr. Rosberg's February 26, 2014, letter stamped as received by the Hearing Clerk; therefore, I have some doubt that the Hearing Clerk received Mr. Rosberg's letter informing the Hearing Clerk of the change of Mr. Rosberg's address. However, I give Mr. Rosberg the benefit of the doubt and find he informed the Hearing Clerk of his new address in Yankton, South Dakota, and the Hearing Clerk failed to serve Mr. Rosberg with the Administrator's Motion for Summary Judgment in accordance with 7 C.F.R. § 1.147(c)(1).

Accordingly, I vacate the ALJ's Amended Decision and Order on Summary Judgment and remand the proceeding to the ALJ to provide Mr. Rosberg an opportunity to respond to the Administrator's Motion for Summary Judgment.

For the foregoing reasons, the following Order is issued.

REMAND ORDER

1. The ALJ's May 30, 2014, Amended Decision and Order on Summary Judgment is vacated.
2. This proceeding is remanded to the ALJ to provide Mr. Rosberg an opportunity to

respond to the Administrator's Motion for Summary Judgment and for further proceedings in accordance with the Rules of Practice.

Done at Washington, DC

September 29, 2014

William G. Jenson
Judicial Officer