

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:) AMA Docket No. 07-0081
)
Allen Jackson Hausman and)
Almacenes De Tejas, L.P. d/b/a ADT)
)
)
Respondents) CONSENT DECISION and
ORDER

This proceeding was instituted under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. § 1621 et seq.)(AMA), and the regulations promulgated thereunder (9 C.F.R. § 350 et seq. and 9 C.F.R. § 362 et seq.) to withdraw voluntary reimbursable meat and poultry identification and certification services from Allen Jackson Hausman and Almacenes De Tejas, L.P. d/b/a ADT (hereinafter referred to as the Respondents). This proceeding was commenced by a complaint filed on March 15, 2007, by the Acting Administrator of the Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA). The parties have agreed that this proceeding should be terminated by entry of the Consent Decision and Order set forth below pursuant to the consent decision provisions of the rules of practice (7 C.F.R. section 1.138).

Respondents admit the jurisdictional allegations in the complaint and specifically admit that the Secretary has jurisdiction in this matter. Respondents neither admit nor deny the remaining allegations, waive oral hearing and further procedure, and waive any action against the complainant under the Equal Access to Justice Act of 1980 (5 U.S.C. section 504 et seq.). Respondents consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

Complainant agrees to the entry of this decision.

Finding of Fact

1. Respondent, Almacenes De Tejas, L.P. d/b/a ADT, is, and at all times material herein was, a limited partnership engaged in the business of the wholesale distribution of meat and poultry products with an address of 9910 Teal Avenue, San Antonio, TX 78224.
2. Respondent, Allen Jackson Hausman, is, and at all times material herein was, the President of Almacenes De Tejas, L.P. d/b/a ADT.
3. The Respondents are, and at all times material herein were, recipients of voluntary identification and certification services under Section 203 of the AMA (7 U.S.C. § 1622), 9 C.F.R. § 350 et seq., and 9 C.F.R. § 362 et seq. with an official establishment number ID 17083.
4. On January 25, 2006, the Respondents each pleaded guilty to, and were each convicted of, a misdemeanor for causing approximately 858 cases of frozen chicken, which were transported in commerce and held for sale after such transportation, to be misbranded by the application of counterfeit labels intended to disguise the source of the product.
5. On January 25, 2006, the Respondents each pleaded guilty to, and were each convicted of, a misdemeanor for possessing counterfeit, simulated and forged certificates and labels bearing counterfeit marks of inspection attached to 858 cases of frozen chicken stored at the warehouse of Almacenes De Tejas, L.P. d/b/a ADT.

Conclusion

The Respondents having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, this decision will be entered.

Order

Voluntary Reimbursable Inspection and Identification Services under Title 1 of the FMIA, and Voluntary Reimbursable Poultry Inspection Services under the PPIA are withdrawn from Respondent firm, establishment number I. D. 17083, directly or through any corporate or other device, for a period of two (2) years beginning on the effective date of this Order. This withdrawal of inspection service shall be held in abeyance, and inspection service shall be provided to Respondent firm, establishment number I. D. 17083, for so long as the conditions set forth below, in addition to all other requirements of applicable inspection service regulations and statutes are met:

1. Sanitation Performance Standards (SPS)

a. Respondent shall comply with the requirements in 9 C.F.R. §§ 416.1-416.6 and develop a written SPS procedure to describe the monitoring activities Respondent will implement and maintain on a daily basis to prevent insanitary conditions and ensure that meat and poultry will not become contaminated or adulterated.

b. Respondent shall develop written pest control procedures consistent with the requirements of 9 C.F.R. §§ 416.2(a) and (b), and shall implement and maintain the procedures for both in-plant and the outside premises to prevent the harborage and breeding of pests within the establishment and surrounding premise. Respondent shall document findings and implement and document effective corrective and preventive actions.

c. Respondent shall implement and maintain said written procedures for the duration of this Order.

2. Sanitation Standard Operating Procedures (SSOP)

a. Respondent shall develop a written SSOP in compliance with 9 C.F.R. §§ 416.11 to 416.16 to describe the procedures and monitoring activities Respondent will conduct, implement and maintain on a daily and on-going basis, before, during and after operations, sufficient to prevent direct contamination or adulteration of products.

b. Respondent shall implement and maintain said written procedures for the duration of this Order.

3. U. S. Condemned/Retained Control. Prior to the effective date of this Order, Respondent shall develop a written program identifying Respondent's procedures when (1) requesting movement of U. S. Retained product or, (2) destroying product that has been released from U.S. Retention (Retained) Tag. Respondent's procedures must at a minimum, include the following:

a. No product or item which has a U.S. Retained/U.S. Reject Tag attached will be moved from its original location, unless the Inspector in Charge (IIC) has knowledge of the reason for the movement, the new location of the product or item is clearly and specifically identified, and a written record is documented and maintained for each such movement.

b. No person, other than an authorized Food Safety and Inspection Service (FSIS) program employee, will remove a U.S. Retained or U.S Reject Tag from product or item.

c. Respondent will submit to the FSIS Inspector in Charge (IIC) and the Dallas District Office (DO) a written request 48 hours prior to the actual time the Respondent wishes to move or destroy U.S. Retained / U.S. Rejected product or items. In

addition to the written submission, the Respondent will ensure receipt of the request by placing a call to the IIC and the District Office. The written request must include date and time of the proposed product disposal, the type and quantity of product involved, method of transport, location of the landfill disposal site, a request for the attendance of the IIC and/or written approval from the DO to proceed with the product disposal without FSIS personnel present.

d. Product which is to be condemned shall be denatured and have the marks of inspection removed or redacted before it is allowed to leave the Respondent's establishment.

e. Respondents shall maintain all written disposal requests, approvals, receipts/records of denaturing and removal of inspection marks on products, such as labeling, including memoranda indicating how the marks of inspection were removed. All such records shall be available to FSIS personnel for review and/or copying immediately upon such request by FSIS.

f. Respondents shall implement and maintain said written procedures for the duration of this Order.

4. Training and Education. Within one-hundred and eighty (180) days of the effective date of this Order, Respondent, Allen Jackson Hausman, shall participate in and successfully complete a training program encompassing ethical business practices which has received prior approval of the Director of Evaluation and Enforcement Division, FSIS (herein after, Director). Respondent shall maintain records documenting the completion of such training for the duration of this Order and shall have those records available upon request by an authorized representative of the Secretary.

5. Corporate Code. Within sixty (60) days of the effective date of this Order, Respondent corporation shall develop and implement a corporate code or policy statement of business conduct and ethics to ensure food safety and regulatory compliance in business practices (hereinafter "Corporate Code") applicable to all business entities and individuals within or employed by Respondent. The Corporate Code, at minimum, shall include: (a) a statement of company policy addressing business ethics and the public trust; (b) a statement of Respondents' commitment to comply with all applicable Federal and State food safety and other laws in the conduct of their business; (c) guidelines for Respondents' employees to follow with respect to food safety and ethics issues; and (d) assurances to preclude any acts of intimidation, assault, or interference of USDA program employees. The Corporate Code shall be submitted to the Director of EED for review and approval prior to implementation, shall be permanently displayed in a prominent location in Respondents' establishment, and shall be discussed with all current and new employees.

6. General Provisions

a. Respondents shall not (i) commit any felony or criminal act under the FMIA or PPIA; or (ii) violate any section of the FMIA, PPIA, Federal, State, or local statute or regulation involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated or misbranded meat or poultry product; (iii) assault, intimidate, impede, or interfere with, or threaten to assault, intimidate, impede, or interfere with any representative or designee of the Secretary of Agriculture.

b. For positions which would make an individual responsibly connected to Respondent firm, Respondent firm shall not knowingly hire or add any new individual who has been convicted, in any Federal or State court, of any felony, or more than one misdemeanor based upon the acquiring, handling, or distributing of unwholesome, misbranded or deceptively packaged food, or based upon fraud in connection with transactions of food. The Respondent firm shall immediately terminate its connection with any such individual when that individual's conviction becomes known to the Respondent firm.

c. Respondents shall maintain full, complete and accurate written records of all business procedures and activities involved in their operations under the AMA, FMIA and PPIA, including Identification services, Certification services (exports), Food inspection services offered under voluntary inspection services, SPS and SSOP record requirements, related to paragraphs 1, 2, 3, 4 and 5 of this Order. Respondents shall make all such records available to FSIS personnel for review and/or copying immediately upon request.

d. Respondents shall designate in writing one full-time person and one alternate who shall be responsible for the overall implementation, coordination, monitoring, recordkeeping, review and maintenance of the facility's SPS, Pest Control Programs, SSOP, U. S. Condemned/Retained Control procedure, Corporate Code training and the requirements of this Order.

e. Respondent shall prepare, each year, a report summarizing Respondent's compliance with each provision of this Order. Each annual report shall be provided to

the Director, Evaluation and Enforcement Division, Office of Program Evaluation, Enforcement and Review, FSIS.

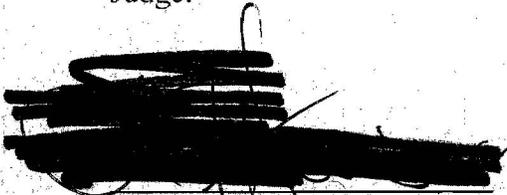
f. Respondents shall fully and completely cooperate with any USDA or FSIS investigation, inquiry, review or examination of Respondent's (a) facility, product, inventory or business records, (b) compliance with the FMIA, PPIA and the regulations issued under these Acts, or (c) compliance with the requirements in this Order, provided that USDA or FSIS has authority to conduct such investigation, inquiry, review or examination.

7. The Administrator, FSIS, shall have the right to summarily withdraw inspection services upon a determination by the EED Director that one or more conditions set forth in paragraphs 1 through 6 of this Order have been violated. Prior to making such a determination, the EED Director shall permit Respondents an opportunity to respond to any alleged violation, both orally and in writing. It is acknowledged that Respondents retain the right to request an expedited hearing pursuant to the rules of practice concerning any violation alleged as the basis for a summary withdrawal of inspection services.

8. Nothing in this Order shall preclude the referral of any such violation to the Department of Justice for possible criminal or civil proceedings, or preclude the Administrator from taking other appropriate administrative action under the FMIA, PPIA, and the regulations promulgated thereunder.

9. If any provision of this Order is declared invalid, such declaration shall not affect the validity of any other provision herein.

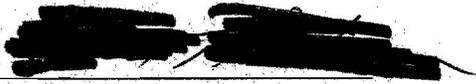
10. This Order shall become effective upon issuance by the Administrative Law Judge.



Allen Jackson Hausman
Respondent and President
of Respondent Almacenes
De Tejas, L.P. d/b/a ADT



Scott C. Safian
Director, Evaluation and
Enforcement Division, OPEER



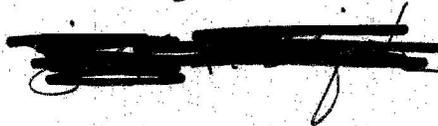
Brett T. Schwemer
Attorney for Respondents



Cory S. Spiller
Attorney for Complainant
Office of the General Counsel

Issued this 27 day of June, 2007

at Washington, D.C.



Administrative Law Judge
Jill S. Clifton