

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) FMIA Docket No. 98-0002  
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)  
Brestensky's Meat Market, Inc. ) Second Amended Stipulation  
and Stephen T. Brestensky, ) and Consent Decision  
)  
Respondents )  
)

This is a proceeding under the Federal Meat Inspection Act, as amended (21 U.S.C. §§ 601-680) (FMIA), and the applicable Rules of Practice (7 C.F.R. §§ 1.131 et seq and 9 C.F.R. § 500.1 et seq) to withdraw Federal meat inspection services from Respondents. This proceeding was commenced by a complaint filed on January 27, 1998, by the Administrator of the Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA), who is responsible for the administration of Federal meat and poultry inspection.

The parties have agreed that this proceeding should be terminated by entry of the Consent Decision set forth below and have agreed to the following stipulations:

1. For the purpose of this Stipulation and the provisions of this Consent Decision only, Respondents admit all jurisdictional allegations of the complaint and waive:
  - (a) Any further procedural steps;
  - (b) Any requirement that the final decision in this proceeding contain findings and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or bases thereof; and
  - (c) All rights to seek judicial review or to otherwise challenge or contest the validity of this decision.
2. This Stipulation and Consent Decision is for settlement purposes in this proceeding only and does not otherwise constitute an admission or denial by Respondents that they violated the regulations or statutes involved.
3. Respondents waive any action against the USDA under the Equal Access to Justice Act of 1980, as amended (5 U.S.C. § 504) for fees and other expenses incurred by Respondents in connection with this proceeding.

4. Respondents, their owners, officers, directors, partners, successors, assigns, and affiliates waive, in addition to the action waived in paragraph three above, any other action against USDA or its employees in connection with this proceeding.

#### Findings of Fact

1. Brestensky's Meat Market, Inc. (hereinafter "Respondent Corporation") is now a business operating a federally inspected meat slaughtering and processing establishment at 203 Route 356, Freeport, Pennsylvania 16229. Respondent Corporation also operates, without federal inspection, a separate retail store in the same building licensed by the State of Pennsylvania as "Brestensky's Market." Respondent Corporation's prior address was 300 Market Street, Freeport, Pennsylvania 16229.

2. Respondent Corporation is now, and at all times material herein was, a recipient of inspection services under Title I of the FMIA.

3. Stephen T. Brestensky, Respondent, was previously connected to Respondent Corporation, but consistent with the Amended Stipulation and Consent Decision dated October 29, 1999, is presently divested both operationally and financially of any involvement of any kind from Respondent Corporation, including its federally inspected establishment and retail store, their successors, affiliates, and assigns for an indefinite period.

4. Brestensky's Meat Market, Inc. was convicted on or about August 23, 1996, and sentenced on or about that same date in the United States District Court for the Western District of Pennsylvania, of one count of selling with intent to defraud, adulterated meat products, within the designated State of Pennsylvania, in violation of 21 U.S.C. §§ 601(m)(8), 610(c)(1) and 676(a).

5. Stephen T. Brestensky was convicted on or about August 23, 1996, and sentenced on or about that same date in the United States District Court for the Western District of Pennsylvania of four counts of the preparation of adulterated meat products, within the designated State of Pennsylvania, in violation of 21 U.S.C. § 601 (m)(9),

610(a) and 676(a).

### Conclusion

Because the parties have agreed to the provisions set forth in the Consent Decision in disposition of this proceeding, the following Order will be issued.

### Order

1. Inspection services under Title I of the FMIA are withdrawn from Respondent Corporation, its successors, affiliates, and assigns, directly or through any corporate device, for a period of two (2) years. This withdrawal shall be held in abeyance and inspection services shall be provided to Respondent Corporation for so long as the conditions set forth below, and all other requirements of inspection are met.
2. Respondent Stephen T. Brestensky shall remain divested both operationally and financially of any involvement of any kind from Respondent Corporation's federally inspected establishment, its successors, affiliates, and assigns for an indefinite period.
3. Respondent Corporation may employ Respondent Stephen T. Brestensky only in a non-managerial position related to the retail store operations. Prior to the effective date of this Second Amended Order, Respondents shall provide the Director EED with a written document that fully and accurately identifies the full duties and responsibilities of Respondent Stephen T. Brestensky for approval; said document, upon approval, shall be attached hereto as Attachment A. Respondent Stephen T. Brestensky shall not be involved in any manner with product formulation control, processing, sales, Sanitation Standard Operation Procedures (SSOP), Hazard Analysis and Critical Control Point (HACCP) or any other food safety programs, activities or operations applicable to the Respondent Corporation's federally inspected establishment.
4. Respondent Corporation shall take actions as necessary to prevent Respondent Stephen T. Brestensky from: (a) providing direction to, (b) exercising operational control of, (c) conducting business for, and (d) having a financial interest in, the federally inspected establishment portion of Respondent Corporation its successors, affiliates, and assigns.

5. Respondent shall make records that substantiate that Respondent Stephen T. Brestensky remains operationally and financially divested from Respondent Corporation's federally inspected establishment available to the Director, Evaluation and Enforcement Division (Director EED), FSIS, USDA immediately upon request.
6. Respondent Corporation shall take all actions necessary to prevent the storage of any compound, additive, or preservative not approved by the FDA and USDA for direct use in meat, meat food products, poultry, or poultry products, including, but not limited to, sodium benzoate on the premises of the Respondent Corporation.
7. Respondent Corporation shall take all actions necessary to preclude the addition of any compound, additive, or preservative not approved by the FDA and USDA for direct use in meat, meat food products, poultry or poultry products, including, but not limited to, the addition of the ingredient sodium benzoate to any, meat, meat food products, poultry, and poultry products manufactured, handled, or stored by the Respondent Corporation.
8. Respondent Corporation shall take all actions necessary to preclude the sale, offer for sale, or distribution of any meat, meat food products, poultry and poultry products of said corporation which are adulterated with any compound, additive, or preservative not approved by the FDA and USDA for direct use in meat, meat food products, poultry, or poultry products, including, but not limited to, sodium benzoate.
9. Respondent Corporation, and any of its officers, partners, employees, agents, or affiliates shall not violate the FMIA, the PPIA or regulations promulgated under these Acts, or any State or local statute or regulation involving the preparation, sale, transportation or attempted distribution of any adulterated or misbranded meat, meat food product, poultry, or poultry product, and Respondent corporation, and any responsibly connected individual, shall not commit any felony or fraudulent criminal act.
10. Respondent Corporation shall not knowingly hire or add any new individual who has been convicted in any Federal or State court of any felony, or of more than one misdemeanor based upon the acquiring, handling, or distributing of unwholesome, mislabeled or

deceptively packaged food, or fraud in connection with a transaction in food and shall immediately terminate its connection with any such individual when that individual's conviction becomes known to Respondent corporation.

11. Respondent Corporation' federally inspected establishment shall operate in accordance with the statutory requirements of the FMIA, PPIA and the regulatory requirements identified in 9 CFR Part 416, including, but not limited to, having SSOP, and ensuring that the official establishment is operated and maintained in a manner sufficient to ensure sanitary conditions; the implementation and validation of its HACCP system in accordance with the requirements of 9 CFR Part 417. Respondent Corporation shall maintain complete and accurate written records of all business activities applicable to the FMIA and PPIA and the regulations promulgated hereunder, including SSOP and HACCP systems records, and make such records available to FSIS for review and/or copying upon request.

12. Respondent corporation shall immediately suspend operations at its retail store operation upon discovery by Respondents, its officers or employees, or any Federal, State or local official, of any compound, additive, or preservative, including, but not limited to, sodium benzoate, within the retail store operation that is not approved by the FDA and USDA for direct use in meat, meat food products, poultry, and poultry products.

13. The provisions set forth in paragraphs 1 and 11 shall apply for a period of two years commencing with the effective date of this Second Amended Order. The provisions set forth in paragraphs 2 – 10 and 12 shall apply indefinitely commencing with the effective date of this Order.

14. The Administrator of FSIS shall have the right to summarily withdrew inspection services upon a determination by the Director EED of any violation of said paragraphs. A summary withdrawal of inspection services shall be subject to Respondents' right to request an expedited hearing on the violations alleged.

15. Nothing in this Second Amended Stipulation and Consent Decision shall preclude

the referral of any violation to the Department of Justice for possible criminal or civil proceedings.

16. If any provision of this Order is declared invalid, such declaration shall not affect the validity of any other provision herein. This Order shall become effective upon issuance by the Administrative Law Judge.

~~\_\_\_\_\_~~ <sup>CEO</sup>  
~~\_\_\_\_\_~~ <sup>for</sup>  
BRESTENSKY MEAT MARKET, INC. <sup>Jr.</sup>  
Respondent Corporation

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SCOTT C. SAFIAN  
Director, Evaluation and Enforcement  
Division, Office of Program Evaluation,  
Enforcement and Review  
United States Department of Agriculture  
Food Safety and Inspection Service

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STEPHEN T. BRESTENSKY  
Respondent

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TRACEY MANOFF, ESQ.  
United States Department of Agriculture  
Office of the General Counsel  
Attorney for Complainant

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~~\_\_\_\_\_~~ 12/20/04  
ROBERT G. HIBBERT  
Attorney for Respondent

DEC 30 3 25

Issued this 14 day of December, 2004  
at Washington, D.C. January 2005

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ADMINISTRATIVE LAW JUDGE

## ATTACHMENT A

**Job Responsibilities -- Stephen T. Brestensky**

Stephen T. Brestensky will serve as an employee of the retail operation of the Brestensky Meat Market. He will report to the owner of the business and will exercise no managerial control over the operation. He will assist customers, execute sales of product and perform other customary retail duties. In this capacity he will maintain access to Brestensky Meat Market's federally inspected facility for purposes such as obtaining meat from coolers, using cutting and grinding equipment to accommodate retail orders, and similar functions. He will also have access to rest room facilities in the establishment. He will not be employed by the inspected establishment in any capacity, managerial or otherwise.