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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 15-0050-OFPA
Docket No. 15-0051-OFPA

In re:

KRIEGEL, INC., and
LAURANCE KRIEGEL,

Respondents.

Appearances: Buren Kidd, Esq., for Complainant

Laurance Kriegel, Pro se Respondent

Before: Janice K. Bullard
Administrative Law Judge

DECISION AND ORDER

The instant matter involves an action initiated by the United States Department of Agriculture (USDA) against Kriegel, Inc., and Laurance Kriegel (Respondents) by filing a notice to Respondents to show cause why their applications for organic certification under 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 should not be denied.

Upon review of the record, I find it appropriate to issue a Decision and Order on the written record. This Decision and Order is based upon the pleadings and arguments of the parties, and the documentary evidence.

I. ISSUE

Whether Respondents are eligible to be certified under the OFPA.

II. STATEMENT OF THE CASE

1. Procedural History

On January 8, 2015, the Administrator of the Agricultural Marketing Service (AMS) filed with the Hearing Clerk for the United States Department of Agriculture's Office of Administrative Law Judges (Hearing Clerk; OALJ) an Order directing Respondents to show cause why their applications for organic certification under the NOP should not be denied. On February 19, 2015, Respondents filed a response to the Order to show cause.

By Order issued April 24, 2015, I directed the parties to file documentary evidence and written argument. On June 24, 2015, Complainant's counsel filed evidence which is hereby admitted to the record. Complainant's counsel also filed Proposed Findings of Fact and Conclusions of Law, together with written argument. Respondents did not file any evidence or argument.

2. Statutory and Regulatory Authority

The Act allows persons to seek and obtain organic certification from certifying agents accredited by the Secretary of USDA to certify crops, livestock, wild crops, products, and handling operations as compliant with the National Organic Standards set forth at 7 C.F.R. part 205. Regulations were issued to implement the Act and ensure consumers that products labeled as "organic" meet the standards promulgated under the Act.

The Act authorizes the Secretary to accredit agents to certify crops, livestock, wild crop and handling operations pursuant to the Act and NOP regulations. Certifying agents are authorized to initiate compliance actions to enforce the NOP. Procedures for non-compliance with the Act and NOP Regulations are set forth at 7 C.F.R. § 205.662.

Operators who believe that they are adversely affected by a noncompliance decision of a certifying agent may appeal that decision to the Administrator of AMS, pursuant to 7 C.F.R. §§ 205.680 and 205.681.

3. Summary of the Evidence

On January 1, 2003, Respondents were certified as an organic operator by the Texas Department of Agriculture (TDA), a certifying agent authorized by the Act and NOP regulations. CX-2. During the course of their inspections of Respondents' operations, TDA identified non-compliances and on May 23, 2007, TDA issued a Notice of Noncompliance and Proposed Suspension to Respondents, for, among other non-compliances, failure to maintain sufficient records and the failure to inform the certifying agent of changes to their organic systems plan. CX-2. Respondents appealed that determination, and by decision entered May 21, 2010, the Administrator of AMS denied the appeal. CX-2. On March 15, 2012, AMS and Respondents entered into a consent decision by which Respondents were deemed ineligible to be certified under the Act and NOP regulations for a period of six months. CX-3.

On January 28, 2013, Respondents applied for organic certification. CX-4. On January 29, 2013, Respondents submitted an organic system plan (CX-5), a seed and planting stock disclosure (CX-6), an organic business registration application (CX-7), and laboratory reports (CX-8). On April 2, 2013, TDA denied Respondents' applications on the grounds that the organic system plan and other records were incomplete. CX-9. On May 2, 2013, Respondents appealed that determination to AMS. CX-13. By decision issued on October 18, 2013, the Administrator of AMS denied the appeal, advising that certification would not be approved until Respondents could demonstrate that they were in compliance with the Act and NOP regulations. CX-1. AMS advised Respondents that they could reapply for organic certification at any time after becoming compliant. CX-1.

On February 24, 2014, Respondents filed another application for organic certification (CX-18), together with an organic system plan, lab reports, and organic business registration application (CX-19). On March 31, 2014, TDA denied Respondents' application. CX-14. On March 14, 2015, Respondents appealed that determination to the Administrator, AMS. CX-15. On July 2, 2014, TDA issued a corrected notice of noncompliance and denial of organic certification to include a notice that Respondents could request mediation. CX-14. Respondents advised AMS that they wished to continue with the appeal they had filed. CX-17. On August 25, 2015, the Administrator, AMS upheld the denial, noting that Respondents remained noncompliant with the Act and NOP regulations. CX-17. AMS observed that Respondents had not submitted a complete organic systems plan and had failed to respond to requests for information that pertained to their eligibility for certification. In addition, Respondents had failed to disclose sufficient information about substances they would use for production to allow TDA to determine whether the substances complied with the Act and NOP regulations.

At no time during the instant adjudication did Respondents provide the additional information that would have allowed TDA, AMS, or me, to determine that their applications were complete.

4. Discussion

The unrefuted evidence establishes that Respondents have not complied with NOP regulations that require applicants to submit complete applications and an organic system plan (OSP) to a certifying agent in advance of being deemed eligible to be a certified producer under the Act. During their review of Respondents' February 7, 2013, application, TDA concluded that Respondents had failed to describe sanitation and handling practices as required by 7 C.F.R. § 204.401. Also, Respondents had failed to clarify information on maps of their property, which

would have identified rights-of-way or adjoining land. Two maps did not correlate with any information contained in the OSP.

TDA's review of Respondents' February 24, 2014 application disclosed twelve areas where Respondents had failed to provide sufficient information to verify their compliance with the Act and NOP regulations.

Respondents' appeal documents and pleadings in the instant matter suggest that Respondents do not appreciate the need to fully cooperate with providing information which TDA required pursuant to the Act and NOP regulations. Respondents' assertion that their "farm plans are self explanatory" (sic) demonstrates lack of cooperation. Respondents' failure to provide sufficient information regarding their operation led to a six month period during which Respondents were not certified under the Act. Respondents' subsequent applications failed to provide sufficient information, thereby supporting the conclusion that Respondents had not demonstrated correction of noncompliances. Respondents failed to provide any evidence in the instant matter showing that they had complied with the regulatory mandate to file complete applications and sufficient information to allow a certifying agent to determine eligibility to participate in the NOP.

I find that the denial of Respondents' applications for organic certification is supported by the preponderance of the evidence.

III. FINDINGS OF FACT

1. Respondent Kriegel, Inc. is a business incorporated in Texas, and is operated by Respondent Laurance Kriegel.
2. The Texas Department of Agriculture (TDA) is accredited by USDA as a certifying agent under the NOP regulations.

3. On May 23, 2008, TDA issued a notice of noncompliance and proposed suspension of Respondents.
4. On June 12, 2008, Respondents appealed that determination, which appeal was denied by AMS Administrator on May 21, 2010.
5. On March 16, 2012, Respondents and AMS entered into a consent decision and order that revoked Respondents' organic certification for six months.
6. On February 7, 2013, Respondents applied for an organic certification which was denied by TDA on April 2, 2013.
7. On May 13, 2013, Respondents appealed that determination to AMS, which affirmed the denial by decision issued October 18, 2013.
8. On February 24, 2014, Respondents submitted another application for organic certification to TDA which was denied by TDA on March 31, 2014.
9. On April 24, 2014, Respondents appealed that determination to AMS.
10. On July 2, 2014, TDA issued a corrected determination to include notice that Respondents could request mediation of the denial of the application.
11. On July 2, 2014, Respondents advised AMS that they wished to continue with their pending appeal.
12. On August 24, 2015, AMS denied Respondents' appeal and affirmed the denial of their application for organic certification.

IV. CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. Pursuant to 7 C.F.R. § 205.2, Laurance Kriegel and Kriegel, Inc. are responsibly connected persons.

3. On April 2, 2013, TDA properly found that Respondents were not eligible for organic certification because they had failed to include all pertinent information to determine eligibility, pursuant to § 205.201(a) of the NOP regulations.
4. On March 31, 2014, corrected on July 2, 2014, TDA properly found that Respondents were not eligible for organic certification because Respondents failed to provide documentation with their application that verified compliance with sections 205.103, 205.200, 205.203, 205.205, 205.206 and 205.406, pursuant to NOP regulations 7 C.F.R. § 205.401(d).
5. The Administrator of AMS properly upheld both of the determinations by TDA that Respondents were not eligible for organic certification.

ORDER

The applications and request for organic certification by Respondents Kriegel, Inc. and Laurance Kriegel are DENIED.

Pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings Initiated by the Secretary, this Decision and Order shall become final and effective without further proceedings 35 days after the date of service upon Respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within thirty (30) days after service. 7 C.F.R. §§ 1.139 and 1.145.

Copies of this Decision and Order shall be sent to the parties by the Hearing Clerk.

The Hearing Clerk shall file the attached exhibits hard copies with the official record; the exhibits are already included in the electronic version of the official record.

So ORDERED this 26th day of August, 2015, in Washington, D.C.

[redacted]

Janice K. Bullard
Administrative Law Judge