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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.) Third 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. §§ 1.130 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

Order, Respondent Stephen T. Brestensky shall participate in a training program or educational course encompassing food safety, sanitation, HACCP, and compliance with applicable Federal and state statutes and regulations related to the production and distribution of meat and poultry products, which has received the prior approval of the EED Director. Respondent shall provide the EED Director with documentation regarding the completion of such training, maintain for the duration of the Order records documenting the completion of such training, and make these records available upon request to any authorized representative of the Secretary.

4. 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.

5. 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.

6. 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.

7. Respondents, respondents business, or any of its officers, partners, employees, agents, affiliates, or assigns shall not:

(a) violate any section of the FMIA, PPIA, or the regulations promulgated under these statutes;

(b) violate any State or local statute involving the preparation, sale, transportation, distribution, attempted distribution, acquiring or handling of any adulterated, non-inspected, misbranded or deceptively packaged meat, poultry, egg products or other foods or food products;

(c) commit any felony, fraudulent criminal act or other criminal act involving fraud, bribery, or extortion;

(d) willfully make or cause to be made any false entry into any accounts, records, or memoranda kept by the respondents in compliance with applicable Federal, State or local statutes or regulations; neglect or fail to make full true and correct entries in such accounts, records or memoranda; or, fail to keep such accounts, records or memoranda that fully and correctly disclose all transactions in respondents' business;

(e) assault, intimidate, impede, threaten or interfere with, or threaten to assault, intimidate, impede or interfere with any USDA or FSIS employee in the performance of his or her official duties under the FMIA, PPIA, EPIA or regulations promulgated there under;

(f) conduct any operation requiring Federal inspection outside the official hours of operation without first submitting a written request to, and receiving written approval from FSIS officials.

8. 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.

9. 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.

10. 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.

11. Respondents shall maintain full, complete and accurate written records of all business activities involved in their operations under the FMIA and PPIA, and under State and local statute, including, but not limited to, SSOP and HACCP records, product specification worksheets, and invoices. Respondents shall make these records available to FSIS for review and copying upon request of any authorized representative of the Secretary.

12. Respondents shall provide an annual compliance report to the EED Director regarding Respondents' compliance with all the terms and conditions of this Order and FSIS statutory and regulatory requirements. The report shall provide information on all compliance issues.

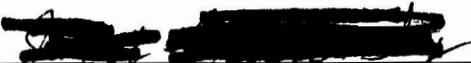
13. The provisions set forth in paragraphs 1 and 12 shall apply for a period of five

(5) years commencing with the effective date of this Third Amended Order.

14. The Administrator of FSIS shall have the right to summarily withdraw 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.

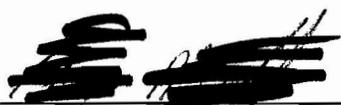
15. Nothing in this Third Amended Stipulation and Consent Decision shall preclude the referral of any violation to the Department of Justice for possible criminal or civil proceedings.

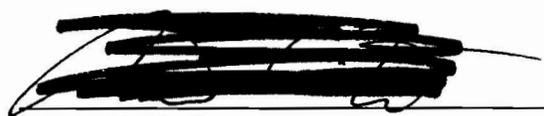
16. If any provision of this Order is declared invalid, such declaration shall not affect the validity of any other provision herein. This Order shall become effective upon issuance by the Administrative Law Judge.


BRESTENSKY MEAT MARKET, INC.
Respondent Corporation
Janet Brestensky
Chief Executive Officer


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


STEPHEN T. BRESTENSKY
Respondent


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


ROBERT G. HIBBERT
Attorney for Respondents

Issued this 26th day of April, 2007
at Washington, D.C.



PETER M. DAVENPORT
Administrative Law Judge