

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)	
Hakan Organics DMCC)	Administrator's Decision
Dubai, United Arab Emirates)	APL-033-17

This Decision is in response to an appeal (APL-033-17) of a Combined Notice of Noncompliance and Proposed Revocation issued by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), National Organic Program (NOP) to Hakan Organics DMCC, located in Dubai, United Arab Emirates. The operation was deemed not in compliance with the Organic Foods Production Act of 1990 (OFPA)¹ and the USDA organic regulations.²

BACKGROUND

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and/or handling operations to the USDA organic regulations (7 C.F.R. Part 205). Certifying agents also initiate compliance actions to enforce program requirements, as described in §205.662. The Act authorizes the NOP to enforce the USDA organic regulations. Persons subject to the Act who believe they are adversely affected by a noncompliance decision, such as a Combined Notice of Noncompliance and Proposed Revocation, may appeal such decision to the AMS Administrator pursuant to §205.680 of the USDA organic regulations.

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

FINDINGS OF FACT

1. Hakan Organics DMCC is a certified organic operation located in Dubai, United Arab Emirates.
2. On April 28, 2017, the NOP issued Hakan Organics DMCC a Combined Notice of Noncompliance and Proposed Revocation.
3. On May 30, 2017, Hakan Organics DMCC appealed the Notice; the appeal was accepted and was acknowledged on May 30, 2017.

DISCUSSION

The NOP issued Hakan Organics DMCC (hereafter, Hakan Organics) a combined Notice of Noncompliance and Proposed Revocation. The Proposed Revocation was issued because Hakan Organic, through its agents, represented fumigated, non-organic soybeans as organic for sale in the United States. These soybean shipments were managed by Hakan Organics, and two related entities: Beyaz Agro (Gazientep, Turkey) and Agropex (Broadway, Virginia).

The investigation that led to the Proposed Revocation relates to a shipment of 16,250 metric tons of soybeans, which arrived in the United States aboard the vessel M/V “Four Diamond” on November 12, 2016. The soybeans had been previously exported from Ukraine to Turkey and were then re-exported from Turkey to the United States. Before leaving Ukraine, the soybeans were fumigated with aluminum phosphide, a prohibited substance under the USDA organic regulations. The NOP investigation revealed that Hakan Organics and its agent, Goksal Beyaz, who serves as the General Coordinator for Hakan Organics and who acted on its behalf, violated the OFPA by knowingly representing and selling the fumigated soybeans as organic.

The Proposed Revocation cited three specific violations. The first was a violation of the USDA organic regulations at §205.272 (Commingling and contact with prohibited substance prevention practice standard). Between March and October, 2016, Hakan Organics imported soybeans in bulk into Turkey from four exporters in Ukraine, as demonstrated in four Ukrainian phytosanitary certificates. These certificates show that the four shipments of soybeans were fumigated with aluminum phosphide, a prohibited substance under the USDA organic regulations. Hakan Agro (Hakan Organics' parent company) was identified on the phytosanitary certificates as the consignee in Turkey, and therefore is a responsible, notified party. In preparation for re-export, the soybeans in bulk from the four shipments were consolidated under one phytosanitary certificate issued by Turkish authorities. The four loads of bulk soybeans were then consolidated and re-exported in a single shipment aboard the M/V "Four Diamond."

The second violation cited the OFPA §6519(c)(2) (Recordkeeping, investigations, and enforcement). In applying for an organic transaction certificate, Hakan Organics acted through its agents Goksal Beyaz and Beyaz Agro to present fraudulent information to a USDA-accredited organic certifying agent. On November 12, 2016, Beyaz Agro presented incomplete and false information to its organic certifying agent to obtain an organic transaction certificate for the load of fumigated soybeans to be shipped on M/V "Four Diamond." Goksal Beyaz and Hakan Organics Import/Export Specialist (b) (6) were copied on the request. The request was made to obtain documentation of the organic status of the products.

The third violation in the Notice cited the USDA organic regulations at §205.100(c)(2) (What has to be certified) and §205.105(a) (Allowed and prohibited substances, methods, and ingredients in organic production and handling). Beyaz Agro sold the non-organic, fumigated soybeans through Hakan Organics affiliate Agropex, to Global Natural. The fumigated soybeans

from the M/V “Four Diamond” were sold through Agropex as organic. Subsequently, Global Natural LLC, on behalf of Hakan Organics, Goksal Beyaz, Beyaz Agro, and Agropex, arranged for the sale of the non-organic soybeans to certified organic handlers in the United States.

In its appeal, Hakan Organics DMCC argues that the violations cited by the NOP were perpetrated by Beyaz Agro, a certified organic handler that is distinct from Hakan Organics. The appeal states that Hakan Organics has no relationship with or control over Beyaz Agro, and Beyaz Agro is not authorized to act as an agent for Hakan Organics. The appeal notes that many allegations in the Proposed Revocation refer to specific actions taken by Beyaz Agro, not directly by Hakan Organics.

Hakan Organics acknowledges that in February 2014, it entered into an agreement with Goksal Beyaz, a Turkish citizen, to open a Hakan Organics satellite operation in Turkey. Hakan Organics’ appeal notes that the “agreement with Mr. Beyaz entrusted him to execute certain transactions on behalf of Hakan Organics in Turkey.” The Hakan Organics appeal states, “Unfortunately, as evidenced by the allegations in the Notice and findings made during Hakan Organics’ internal investigation into those allegations, that trust was grossly misplaced. On April 28, 2017, immediately upon learning of the misconduct alleged in the Notice, Hakan Organics terminated its relationship with Mr. Beyaz.”

Hakan Organics also stated that it cannot confirm what information was communicated to (b) (6), identified in the Proposed Revocation as a Hakan Organics’ “Import/Export Specialist.” The appeal states that (b) (6) is not an employee of Hakan Organics. While Mr. Beyaz was authorized to establish e-mail accounts under the hakanfoods domain name for use by the Turkish operation, the appeal states that (b) (6) was not an employee or agent of Hakan

Organics. No one shared with Hakan Organics any notice or documentation about any shipments that would indicate Beyaz Agro was falsely representing them to be organic.

Hakan Organics responds to the specific violations in the Proposed Revocation as follows. First, Hakan Organics denies causing organic products to come into contact with prohibited substances or selling treated soybeans as organic. Beyaz Agro, not Hakan Organics, was the entity that obtained certificates and re-exported the soybeans.

Second, Hakan Organics denies that Beyaz Agro was an agent authorized to act on its behalf, and states that any action Mr. Beyaz took on behalf of Beyaz Agro was not authorized by Hakan Organics. Hakan Organics denies that Beyaz Agro was its agent, and thus Beyaz Agro's alleged misconduct should not be imputed to Hakan Organics.

Third, Hakan Organics notes that while it partnered with Mr. Beyaz to open satellite operations in Turkey and granted Mr. Beyaz authority to take certain actions on its behalf, it had no such agreement with Beyaz Agro. The appeal notes that when Hakan Organics confronted Mr. Beyaz about the allegations, Mr. Beyaz admitted his responsibility for the actions of Beyaz Agro, which were outside the authority granted by Hakan Organics.

Hakan Organics closes its appeal by stating it has reviewed its internal controls and external partners to ensure that Hakan Organics and all individuals it works with comply with all applicable laws. The appeal closes with, "Hakan Organics is not Beyaz Agro, and despite the unfortunate and now terminated relationship with Mr. Beyaz, that USDA cannot and should not revoke Hakan Organics' organic certification on account of Beyaz Agro's misconduct."

In response to the appeal, AMS notes four key points that demonstrate Hakan Organics' involvement in the transaction that represented the soybeans treated with prohibited substances as organic.

First, in its appeal, Hakan Organics acknowledges that it partnered with Mr. Beyaz to open satellite operations in Turkey and granted Mr. Beyaz authority to take certain actions on its behalf. The appeal also noted that Mr. Beyaz was authorized to establish e-mail accounts under the hakanfoods domain name for use by the Turkish operation. The delegation of these permissions is evidence that Hakan Organics understood that people with hakanfoods email addresses would be representing Hakan Organics beyond Mr. Beyaz.

Second, the phytosanitary certificates involved in this case identified Ukraine as the country of origin for the soybeans, and Hakan Agro DMCC (parent company of Hakan Organics) was identified on the phytosanitary certificates as the consignee in Turkey; it therefore is a responsible, notified party. Other documents obtained through the investigation also include hakanfoods.com email addresses.

Third, as additional evidence of the connection between these businesses, in early 2017, Hakan Organics and Beyaz Agro shared an exhibition booth at the Biofach World Organic Trade Fair in Nuremberg, Germany. Booth staff provided two business cards for Goksal Beyaz; one card was labeled Goksal Beyaz, Chairman, Beyaz Agro; the other was labeled Goksal Beyaz, General Coordinator, Hakan Organics.

Finally, during NOP's investigation, staff interviewed a representative of Global Natural, a party receiving products from these transactions. This representative provided a contract titled "Trade Agency Agreement" between Hakan Organics and Global Natural, which stated that the parties agreed to enter into business on a sales agency basis. The agreement was signed by Goksal Beyaz as the General Coordinator for Hakan Organics DMCC. The Global Natural representative stated that Global Natural's contract is with Hakan Organics; that all sales were reported to Beyaz Agro in Gaziantep, Turkey; and that Goksal Beyaz, Hakan's General

Coordinator, signed his contract with Hakan. The representative stated that Hakan Agro DMCC and Beyaz Agro are the same organization; Goksal Beyaz works for Hakan, and Beyaz Agro is a functional part of the Hakan organization. As further evidence of this connection, Global Natural provided a banking record from February, 2017, documenting the wire transfer of \$ (b) (4) directly from Hakan Agro DMCC to Global Natural LLC.

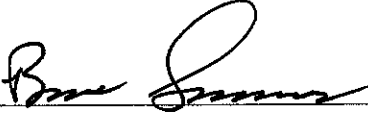
CONCLUSION

The evidence indicates that the NOP's April 28, 2017, Notice of Noncompliance and Proposed Revocation to Hakan Organics DMCC was appropriate due to the nature of the violations.

DECISION

The appeal is denied. Hakan Organics DMCC's organic certification is to be revoked. Attached to this formal Administrator's Decision is a Request for Hearing form. Hakan has thirty (30) days to request an administrative hearing before an Administrative Law Judge. If Hakan does not request a hearing in that period, this Decision will be implemented and the NOP will revoke Hakan Organics DMCC's organic certification. In accordance with §205.662(f)(2) of the USDA organic regulations, "A certified operation or a person responsibly connected with an operation whose certification has been revoked will be ineligible to receive certification for a period of 5 years following the date of such revocation."

Done at Washington, D.C., on this 5th
day of July, 2017.



Bruce Summers

Acting Administrator