

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF AGRICULTURE

In the Matter of the Suspension of Alvin
Schlangen Food Sales

**ORDER DENYING MOTION
TO VOLUNTARILY WITHDRAW
CONTESTED CASE**

This matter came before the Honorable Amy J. Chantry, Administrative Law Judge, pursuant to Alvin Schlangen's (Respondent) Motion to Voluntarily Withdraw Contested Case, which was filed on January 22, 2013. Kimberly Middendorf, filed a response in opposition to the Respondent's Motion on January 31, 2013. The Respondent then filed a response on February 8, 2013, in response to the Respondent's response. The Department was given until March 15, 2013, to file an additional response. The hearing then closed on March 15, 2013.

Based upon all of the filings in this matter, and for the reasons set out in the accompanying Memorandum,

IT IS HEREBY ORDERED: that the Motion to Voluntarily Withdraw Contested Case is DENIED.

Dated: March 26, 2013

s/Amy J. Chantry

AMY J. CHANTRY
Administrative Law Judge

MEMORANDUM

Procedural Background

On November 11, 2011, a Prehearing Conference was held. At that time, the Respondent indicated that he was not subject to the jurisdiction of the state's regulatory jurisdiction or its appeal's process, including the contested case process. On August 6, 2012, Administrative Law Judge, Manuel Cervantes issued a Prehearing Order. In his Pre-Hearing Order, Judge Cervantes concluded that the Department has authority to regulate the Respondent's food handling operation pursuant to the statutory authority

outlined in the Notice and Order for Hearing in this matter and that the Respondent is subject to the jurisdiction of the state's food regulations and the appeal's process.¹

On January 24, 2012, the Department served Respondent with the Department's first set of discovery requests, which included requests for admission and requests for the production of documents. Pursuant to Rule 1400.6800, Respondent was required to respond to the Department's requests for admissions within 10 days of the receipt of the requests. The Respondent failed to comply with the Department's discovery requests. He also did not request an extension of the time limit to respond.

On July 13, 2012, a telephone prehearing conference was held and the Respondent was ordered to respond to the Department's discovery requests no later than August 14, 2013. Respondent failed to provide any response to the Department's interrogatories, or otherwise comply with discovery. Respondent was found in default by Administrative Law Judge Manuel Cervantes in an Order dated October 10, 2012.

On November 14, 2012, Respondent filed a response to the ALJ's Order Granting *Pro Hac Vice*. As part of his response, Respondent asserted that now that he had legal counsel he was in a position to respond to the Department's discovery requests. On December 20, 2012, another Prehearing Conference was held. As part of the Prehearing Conference, Respondent agreed to comply with the Department's previous discovery requests by January 21, 2013, now that he had legal counsel to assist him. However, instead of responding to the Department's discovery requests, Respondent filed a Motion to Withdraw Contested Case.

Pursuant to Rule 41.01 (b) of the Minnesota Rules of Civil Procedure an action shall not be dismissed at the requestor's insistence "except upon order of the court and upon such terms and conditions as the court deems proper."² The reviewing entity "has wide discretion in determining whether to grant a plaintiff's motion for dismissal."³

The Respondent seeks to voluntarily withdraw his contested case because he does not believe the Department would be prejudiced by a dismissal. The Administrative Law Judge disagrees. The Respondent's willful failure to cooperate with discovery has been a pattern in this case. He has repeatedly missed discovery deadlines since first being served with discovery requests on January 24, 2012. Even after assuring this ALJ that he could and would comply with a 30 day discovery extension, the Respondent failed to provide the requested discovery. Instead of complying, the Respondent filed a Motion to Voluntarily Withdraw Contested Case. The ALJ sees the Respondent's actions as a blatant disregard of its December 27, 2012, Prehearing Order and of Minn. R. 1400.6800. The Respondent has been given every opportunity to provide the requested discovery and yet has repeatedly failed to do so. The Respondent's failure to ever provide any discovery in this case prejudices the Department by preventing it from preparing a defense to the Respondent's assertions

¹ Prehearing Order dated August 6, 2012.

² Minn. R. Civ. P. 41.01(b).

³ *Hoyt Properties, Inc. v. Production Resource Group*, 716 N.W. 2d 366, 376 (Minn. Ct. App. 2006).

that he and his food business are not subject to Minnesota's food regulations, because he is operating a food cooperative.

Moreover, the Respondent has maintained since the November 11, 2011, Prehearing Conference in this matter that he is not subject to the jurisdiction of the state's regulatory jurisdiction or its appeal process, including the contested case process. The Respondent's lack of compliance leads this ALJ to believe that he still believes he is outside of the regulations governing him and his food business. The Respondent should not be rewarded for his non-complying behavior by being allowed to withdraw his case without a decision with respect to the Department's Motion for Summary Disposition or a hearing on the merits.

Therefore, because of the Respondent's willful failure to comply with the Department's discovery requests and the prejudice caused to the Department, the Respondent's Motion to Voluntarily Withdraw Contested Case is denied.

A. J. C.