



BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Hung Ta Fan/58704-112
CI NE Ohio Corr Ctr
Correctional Institution
2240 Youngstown Hubbard Rd.
Youngstown, OH 44505

06-08-2011

PROPOSAL TO DEBAR
NOTICE OF OPPORTUNITY FOR HEARING
Docket No. FDA-2011-N-0183

Dear Mr. Fan:

This letter is to inform you that the Food and Drug Administration (FDA) is proposing to issue an order debaring you for a period of five years from importing articles of food or offering such articles for import into the United States. FDA bases this proposal on a finding that you were convicted, as defined in section 306(l)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 335a(1)(1)(B)), of a felony under Federal law for conduct relating to the importation into the United States of an article of food. This letter also offers you an opportunity to request a hearing on this proposal, and provides you with the relevant information should you wish to acquiesce to this proposed debarment.

Conduct Related to Conviction

On August 4, 2010, you were convicted, as defined in section 306(l)(1)(B) of the Act, when the United States District Court for the Northern District of Illinois accepted your plea of guilty and entered judgment against you, for the offense of conspiracy, in violation of 18 U.S.C. §§ 371 and 2, for conspiring to defraud the United States and to violate 18 U.S.C. § 542 (entry of Goods into the United States by means of false statements) and 18 U.S.C. § 545 (importation contrary to law). The underlying facts supporting this conviction are as follows.

In or around March 2005 and continuing until in or around November 2006, in violation of 18 U.S.C. §§ 371 and 2, you agreed and conspired with others to defraud the United States and to commit offenses against the United States, to wit: Entry of Goods into the United States by means of False Statements in violation of 18 U.S.C. § 542; and Smuggling Goods into the United States in violation of 18 U.S.C. § 545. The offenses you conspired to commit related to the importation into the United States of an article of food, honey. Specifically, you owned and operated Blue Action Enterprise, Inc., 7 Tiger Enterprises, Inc., Honey World Enterprise, Inc., Kazak Food Corp., and Kashaka USA, Inc, through which you imported honey into the United States. You conspired to cause these companies to import, enter, and sell Chinese-origin honey

into the United States and avoid payment of antidumping duties by falsely declaring to the United States Department of Homeland Security, Bureau of Customs and Border Protection that the imported honey originated from countries other than China, including India, South Korea, Taiwan, and Thailand, when in fact you knew that the honey originated in China. Your actions allowed you to avoid paying approximately \$5,378,370 in antidumping duties to the United States.

Further, in or around January 2009, in violation of 18 U.S.C. §§ 371 and 2, you agreed and conspired with others to enter into the commerce of the United States honey diluted and blended with approximately 20 to 30 percent artificial sugar, by means of false and fraudulent declarations and practices in violation of 18 U.S.C. § 542, for the purpose of increasing your profits.

FDA's Finding

Section 306(b)(1)(C) of the Act (21 U.S.C. § 335a(b)(1)(C)) permits FDA to debar an individual from importing an article of food or offering such an article for import into the United States. An individual who has been convicted of a felony for conduct relating to the importation into the United States of any food may be subject to debarment, as set forth in section 306(b)(3)(A) of the Act (21 U.S.C. § 335a(b)(3)(A)). FDA finds that your felony conviction for conspiracy, in violation of 18 U.S.C. §§ 371 and 2, was for conduct relating to the importation of an article of food because you conspired to commit offenses related to the importation of Chinese honey into the United States. Because your felony conviction occurred less than five years before the initiation of this action, this action is timely under Section 306(l)(2) of the Act (21 U.S.C. 335a(l)(2)).

The maximum period of debarment for an offense under section 306(c)(2)(A)(iii) of the Act (21 U.S.C. § 335a(c)(2)(A)(iii)) is five years. Section 306(c)(3) of the Act (21 U.S.C. § 335a(c)(3)) provides six factors for consideration in determining the appropriateness of and period of permissive debarment for an individual. Those factors relevant to the debarment of an individual for a felony conviction for conduct relating to the importation into the United States of any food are as follows:

1. the nature and seriousness of any offense involved,
2. the nature and extent of management participation in any offense involved, whether corporate policies and practices encouraged the offense, including whether inadequate institutional controls contributed to the offense,
3. the nature and extent of voluntary steps to mitigate the impact on the public of any offense involved, including . . . full cooperation with any investigations (including the extent of disclosure to appropriate authorities of all wrongdoing) . . . and any other actions taken to substantially limit potential or actual adverse effects on the public health,
4. whether the extent to which changes in ownership, management, or operations have corrected the causes of any offense involved and provide reasonable assurances that the offense will not occur in the future, and

5. prior convictions under the Act or under other Acts involving matters within the jurisdiction of the Food and Drug Administration.

FDA has determined that four of these factors are applicable for consideration:

- 1. Nature and seriousness of any offense involved.**

As described in detail above, you were convicted of the offense of conspiracy to enter goods into the United States by means of false statements in violation of 18 U.S.C. § 542 and for smuggling goods into the United States in violation of 18 U.S.C. § 545, all in violation of 18 U.S.C. §§ 371 and 2.

The Agency finds that your conduct seriously undermined FDA's regulation of the importation of food into the United States and the introduction of food into interstate commerce. You caused the submission of false information to a United States customs broker, who relied on your declarations, by declaring that honey that actually originated in China instead originated in other countries. By so doing, you avoided paying more than \$5.3 million in anti-dumping duties. Accordingly, FDA concludes that the nature and seriousness of the offenses involved support the maximum possible period of debarment.

- 2. Nature and extent of management participation in any offense involved, whether corporate policies and practices encouraged the offense, including whether inadequate institutional controls contributed to the offense.**

As the owner and operator of multiple companies, which you created to avoid the scrutiny of the Department of Homeland Security, Bureau of Customs and Border Protection, you knowingly and willfully, with the intent to defraud the United States, did pass and cause to be passed through customs fraudulent honey. As the owner of the importing companies, you were responsible for the accuracy of declarations made to United States customs officials, and you conspired to take fraudulent actions through your companies with the purpose of committing the offense described above. Accordingly, FDA concludes that the nature and extent of your participation as the owner and operator of the company support the maximum possible period of debarment.

- 3. Nature and extent of voluntary steps to mitigate the impact on the public of any offense involved.**

You were convicted of conspiring to smuggle merchandise into the United States without properly declaring the origin of the merchandise as required by United States law. You knew that the declarations made about the merchandise you imported were false, and you acted willfully with the intent to defraud the United States. You took no steps to mitigate the impact on the public of your actions, which undermined the integrity of FDA's regulation of the importation of food into the United States and the introduction of food into interstate commerce.

The facts support the belief that you displayed a wanton disregard for the food importation regulatory process. Accordingly, FDA has determined that your failure to take any steps to mitigate the impact on the public supports the maximum possible period of debarment.

4. Prior convictions under the Act or involving matters within the jurisdiction of FDA.

FDA is unaware of any prior criminal convictions involving matters within the jurisdiction of FDA.

Proposed Action and Notice of Opportunity for Hearing

FDA concludes that the findings discussed above support the maximum period of debarment. FDA therefore proposes to issue an order under section 306(b)(1)(C) of the Act (21 U.S.C. § 335a(b)(1)(C)) debarring you from importing articles of food or offering such articles for import into the United States for a period of five years. You were convicted of conspiracy, in violation of 18 U.S.C. §§ 371 and 2, for conspiring to defraud the United States by importing honey for which you falsely declared the country of origin to avoid paying anti-dumping duties. FDA therefore finds that this conviction was for conduct relating to the importation of an article of food.

In accordance with section 306 of the Act (21 U.S.C. § 335a) and 21 CFR part 12, you are hereby given an opportunity to request a hearing to show why you should not be debarred.

If you decide to seek a hearing, you must file the following: (1) on or before 30 days from the date of receipt of this letter, a written notice of appearance and request for hearing; and (2) on or before 60 days from the date of receipt of this letter, the information on which you rely to justify a hearing. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for a hearing, information and analyses to justify a hearing, and a grant or denial of a hearing are contained in 21 CFR part 12 and section 306(i) of the Act (21 U.S.C. § 335a(i)).

Your failure to file a timely written notice of appearance and request for hearing constitutes an election by you not to use the opportunity for a hearing concerning your debarment and a waiver of any contentions concerning this action. If you do not request a hearing in the manner prescribed by the regulations, FDA will not hold a hearing and will issue a final debarment order as proposed in this letter.

A request for a hearing may not rest upon mere allegations or denials but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. A hearing will be denied if the data and information you submit, even if accurate, are insufficient to justify the factual determination urged. If it conclusively appears from the face of the information and factual analyses in your request for a hearing that there is no genuine and substantial issue of fact that precludes the order of debarment, the Commissioner of Food and Drugs will deny your request for a hearing and enter a final order of debarment.

You should understand that the facts underlying your conviction are not at issue in this proceeding. The only material issue is whether you were convicted as alleged in this notice and, if so, whether, as a matter of law, this conviction supports your debarment under section 306(b)(1)(C) of the Act (21 U.S.C. § 335a(b)(1)(C)) as proposed in this letter.

Your request for a hearing, including any information or factual analyses relied on to justify a

Hung Ta Fan

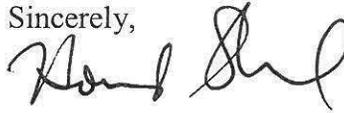
Docket No. FDA-2011-N-0183

hearing, must be identified with Docket No. FDA-2011-N-0183 and sent to the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. You must file four copies of all submissions pursuant to this notice of opportunity for hearing. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

You also may notify FDA that you acquiesce to this proposed debarment. If you decide to acquiesce, your debarment shall commence upon such notification to FDA in accordance with section 306(c)(2)(B) (21 U.S.C. § 335a(c)(2)(B)).

This notice is issued under section 306 of the Act and under authority delegated to the Director, Office of Enforcement, Office of Regulatory Affairs.

Sincerely,



Howard R. Sklamberg
Director
Office of Enforcement
Office of Regulatory Affairs

Hung Ta Fan
Docket No. FDA-2011-N-0183

cc:

HF-22/Matthew Warren
HFC-130/Michael Rogers
HFC-300/ Jeffrey Ebersole
HFM-100
HFC-170/Domenic Veneziano
HFS-605/Jennifer Thomas
HFS-007/Amy Barringer
HFS-615/Roberta Wagner
HFC-2/ Melissa Pickworth
HFC-1 Michael Verdi
GCF-1/Joy Dawson
GCF-1/Ann Wion
GCF-1/Jessica O'Connell
HFC-230/Debarment File
HFC-230/CF
HFC-200/CF