APPELLANT: Congregation Ohr Torah
3 College Road
Monsey, NY 10952

RESPONDENT: New York State Education Department
Child Nutrition Program Administration
99 Washington Avenue, Room 1623
Albany, NY 12234-0055

STATE: New York; Greene County

RECEIVED
AUG 2 2 2011
Office of Counse

In the Matter of the Appeal by

CONGREGATION OHR TORAH

from a decision by the New York State Education Department denying their application to participate in the 2011 Federal Summer Food Service Program

DECISION

I find that respondent acted in accordance with the Federal Child Nutrition Program's regulations, specifically those that pertain to the Summer Food Service Program found at 7 CFR Part 225, when it denied appellant's application to participate in the 2011 Summer Food Service Program.

This Decision is rendered this 13th day of August 2011.

Maureen Lavare
Hearing Officer

LIST OF REPRESENTATIVES

For the Appellant:
Kalman Braun,
Director
Congregation Ohr Torah
3 College Road
Monsey, NY 10952

For the Respondent:
Frances O'Donnell
Coordinator
Child Nutrition Program Administration
New York State Education Department
99 Washington Avenue, Room 1623
Albany, NY 12234-0055

Paula Tyner-Doyle
School Food Programs Specialist III
Child Nutrition Program Administration
New York State Education Department
99 Washington Avenue, Room 1623
Albany, NY 12234-0055

DOCUMENTS SUBMITTED AND REVIEWED

FOR THE APPELLANT

1. August 1, 2011 letter from Kalman Braun, Director for Congregation Ohr Torah responding to hearing officer Maureen Lavare's July 28, 2011 letter
2. Form CT-3-S, New York S Corporation, Franchise Tax Return for Camp Achim Inc.
3. June 20, 2011 unsigned letter from Aaron D. Goldstein to Workers' Compensation Board regarding Congregation Ohr Torah d/b/a Camp Achim
4. July 29, 2011 letter from Kalman Braun, Director of Congregation Ohr Torah to hearing officer Maureen Lavare appealing the State Education Department's, Child Nutrition Program's denial of Congregation Ohr Torah's Summer Food Service Program 2011 Sponsor Application/Agreement
5. July 14, 2011 letter from Kalman Braun, Director of Congregation Ohr Torah to hearing officer Maureen Lavare appealing the State Education Department's, Child Nutrition Program's denial of Congregation Ohr Torah's Summer Food Service Program 2011 Sponsor Application/Agreement
6. May 3, 2000 letter from the Internal Revenue Service to Congregation Ohr Torah determining that Camp Ohr Torah is exempt from federal income tax under section 501(a) of the Internal Revenue Code

7. NYS Department of State Division of Corporations Filing Receipt for Assumed Name Certificate dated December 29, 2000
8. July 6, 2011 letter from Kylie Smith, School Food Program Specialist I of the State Education Department's, Child Nutrition Program to Rachel Willner of Congregation Ohr Torah denying its 2011 Summer Food service Program Application/Agreement and enclosing appeal procedures

FOR THE RESPONDENT

1. August 2, 2011 letter from Paula Tyner-Doyle (CNP) to hearing officer Maureen Lavare explaining the State Education Department's, Child Nutrition Program's position in this appeal
2. Copies of regulatory sections from 7 CFR Part 225
3. April 8, 2011 memorandum from the United States Department of Agriculture
4. June 12, 2011 Non Profit Organization Financial Administrative Form submitted by Congregation Ohr Torah
5. Lease Agreement dated June 24, 2010 between Pleasant Fields Inc. and Congregation Ohr Torah
6. Seravia public records search for Pleasant Fields, Inc. and Camp Achim, Inc.
7. New York State Department of State, Division of Corporations, Entity Information on Camp Achim, Inc.
8. Copy of Camp Achim brochure
9. Certificate of Assumed Name for Congregation Ohr Torah, Inc. as Camp Achim
10. New York State Department of State, Division of Corporations filing receipt, stating filed 12/29/00 for entity name Congregation Ohr Torah, Inc. using assumed name Camp Achim
11. New York State Department of State, Division of Corporations filing receipt, stating filed 12/05/01 for entity name Congregation Ohr Torah, Inc. using assumed name Camp Achim Special Projects
12. Decision dated December 16, 2004 in Mosdos Oraysa, Inc. v. Sausto
13. Two internet articles regarding property owned by the Ukrainian American Cultural Foundation
14. June 20, 2011 unsigned letter from Aarron D. Goldstein to Workers' Compensation Board regarding Congregation Ohr Torah d/b/a Camp Achim
15. Certificate of Incorporation of Congregation Ohr Torah, Inc. signed on January 17, 2000
16. Page 1 of the 2009 sponsor application/agreement submitted by Congregation Ohr Torah
17. Page 1 of the 2011 sponsor application/agreement submitted by Congregation Ohr Torah

HEARING OFFICER'S EXHIBIT

1. July 6, 2011 letter from Kylie Smith, School Food Program Specialist I of the State Education Department's, Child Nutrition Program to Rachel Willner of Congregation Ohr Torah denying its 2011 Summer Food Service Program Application/Agreement and enclosing appeal procedures
2. July 14, 2011 letter from Kalman Braun, Director of Congregation Toras Achim to hearing officer Maureen Lavare appealing the State Education Department's, Child Nutrition

Program's denial of Congregation Ohr Torah's Summer Food Service Program 2011 Sponsor Application/Agreement

3. July 19, 2011 letter from hearing officer Maureen Lavare to Frances O' Donnell, Coordinator of the State Education Department's Child Nutrition Program and Mr. Kalman Braun, Director of Congregation Toras Achim finding that Congregation Toras Achim's request for appeal was made in a timely manner and requiring the parties to submit all correspondence and documentation by August 2, 2011
4. July 27, 2011 letter from Frances O' Donnell, Coordinator of the State Education Department's Child Nutrition Program to hearing officer Maureen Lavare, with a copy to Mr. Kalman Braun, Director of Congregation Toras Achim stating that the State Education Department has no record of Congregation Toras Achim submitting an application to participate in the 2011 Summer Food Service Program
5. July 28, 2011 letter from hearing officer Maureen Lavare responding to the July 27, 2011 letter from Frances O'Donnell, Coordinator of the State Education Department's Child Nutrition Program allowing the appeal to continue

PROCEDURAL BACKGROUND

By letter dated July 14, 2011 Congregation Toras Achim requested an appeal of the State Education Department's, Child Nutrition Program's (respondent's) decision to deny the application of Congregation Ohr Torah for the 2011 Summer Food Service Program (SFSP) (hearing officer's document # 2). Congregation Ohr Torah (appellant) was notified of respondent's decision to deny its application by letter dated July 6, 2011 (hearing officer's document #1 and appellant's document #8). By letter dated July 19, 2011 I found the request for appeal to be timely and required both parties to submit all documentation it wanted considered as part of the appeal to my office, with a copy to the opposing party, by August 2, 2011.

Respondent submitted a letter dated July 27, 2011 correctly pointing out that the appeal was requested by Congregation Toras Achim, of which respondent has no record because it was Congregation Ohr Torah's application that was denied for the 2011 SFSP (hearing officer document #4). I responded with a letter dated July 28, 2011 stating that although it was not the sponsor (Congregation Ohr Torah) who requested the appeal but another entity (Congregation Toras Achim) I would allow the appeal to continue, with the expectation that this discrepancy would be clarified by appellant (hearing officer document #5). Both party's submitted letters and written documentation for my consideration by August 2, 2011.

FINDINGS

The primary purpose of the SFSP is to provide food service to children from needy areas during periods when area schools are closed for vacation (7 CFR §225.1). In June 2011 appellant submitted an application for a meal service program beginning July 6, 2011 through August 29, 2011. Appellant submitted the application as a "new sponsor" (respondent's document #17). A sponsor is defined, in part, in the SFSP's federal regulations as a public or private non-profit residential summer camp which provides summer food service similar to that made available to children during the school year under the National School Lunch and School Breakfast programs (7

CFR §225.2). Appellant operates a residential summer camp called Camp Achim at 60 Pleasant Acres Road, Leeds, New York. Appellant's 2011 SFSP application states that it is a private, non-profit residential camp (respondent's document #17). The SFSP's federal regulations allow private non-profit organizations to be eligible sponsors (7 CFR §225.14[a][5]). The regulations define a private non-profit organization as being tax exempt under the Internal Revenue Code and complying with several other requirements enumerated in 7 CFR §225.2. Appellant has submitted a May 3, 2000 letter from the Internal Revenue Service stating that it is exempt from federal income tax under Section 501(a) of the Internal Revenue Code (appellant document #6).

In addition to the federal regulatory requirements for sponsors, the United States Department of Agriculture (USDA) which maintains oversight over the SFSP, issued a memorandum dated April 8, 2011which allows State agencies, such as respondent, to approve meal service sites which are not identified as non-profit in certain limited circumstances (respondent document #3). Previous to this memorandum, the USDA strictly required that only meal service sites identified as non-profit could be approved SFSP sites. The memorandum states, however, that the site "must be operated under the sponsorship of an eligible public or private non-profit service institution." The memorandum also states that "[E]nrolled for-profit sites or for-profit camps remain ineligible for participation in the SFSP" (respondent's document #3).

As part of its application for the 2011 SFSP, appellant was required to fill out a form entitled "Non Profit Organization Financial Administrative Form" (respondent document #4). Respondent asserts, and upon review I must agree, that the questions in this form were answered sparingly by appellant. Appellant states at the top of the form that it is doing business as "Camp Achim" (respondent document #4). This form lists the street address for the appellant as 60 Pleasant Acres Road, Leeds, New York and the mailing address as 3 College Road, Suite 203, Airmont, New York (respondent document #4). Additionally, one of the listed board members on this form is Yshai D. Willner (respondent document #4). Appellant also submitted, as part of its application to respondent, a copy of a lease agreement it entered into with Pleasant Fields Inc. to rent 60 Pleasant Acres Road, Leeds, New York from June 25, 2010 through August 29, 2010 for $280,000.00 (respondent's document #5). This is the address of Camp Achim.

Upon receipt of this information, respondent checked the corporate status of Camp Achim through the New York State Department of State and found that it is a for-profit domestic business corporation with an office address of 3 College Road, Suite 203, Airmont, New York and its chairman or chief executive officer is Yshia David Willner (respondent document #7). This is the same address as appellant and Mr. Willner is also a board member of appellant (respondent's document #15). Further, respondent checked the corporate status of Pleasant Fields, Inc., the camp property's landlord through a Seravia public records search, and discovered that it is also a for-profit domestic business corporation with an office address of 3 College Road, Suite 203, Airmont, New York and its contact person is Yshia David Willner (respondent document #6). Additionally, respondent found that appellant has filed certificates of assumed name with the New York State Department of State as "Camp Achim" and "Camp Achim Special Projects" (respondent documents #9, 10 and 11).

Respondent has also submitted a court decision which references that Yshia David Willner had contracted to purchase three acres of real property in Green County known as Pleasant Acres (respondent's document #12). Attached to the decision are two internet articles regarding the purchase of property in Glen Spey, New York. Respondent asserts that these documents establish that Yshia David Willner purchased or was in contract to purchase a camp property in Glen Spey, New York from the Ukrainian American Cultural Foundation. However, newspaper and web articles do not constitute evidence of the truth of the statements contained therein and therefore I have not considered the web articles.

Based on the above information, respondent asserts that it was obligated to deny appellant's 2011 SFSP application because it is doing business as Camp Achim which is a for-profit domestic business corporation. Appellant argues that it is a 501(c) (3) organization under the Internal Revenue Code; that it uses the name Camp Achim "in keeping with the reputation that has become associated with the name in the community that it serves," and that it "does not enjoy any legal connection with the for-profit corporation [Camp Achim, Inc.]."

Section 130 of the General Business Law requires persons, such as appellant, to file a certificate of assumed name when it is conducting business in the State under any name other than its real name (General Business Law §130). In this case appellant, Congregation Ohr Torah is a religious corporation that has filed an assumed name of Camp Achim. Camp Achim, Inc. is a domestic for-profit corporation. While I caution respondent from presuming that a certificate of assumed name constitutes that the entities are one and the same, given the unique facts of this situation, I find respondent's consideration of the assumed name certificates to be reasonable.

In this matter, appellant has filed a certificate of assumed name of a for-profit corporation operating out of the same office address as appellant and with a corporate officer who is also one of appellant's board members. Additionally, appellant and Camp Achim are entwined with yet another for-profit corporation, Pleasant Fields Inc., the landlord for the real property that Camp Achim is located on. Similar to Camp Achim, Inc., Pleasant Fields Inc., is operating out of the same office address as appellant and with a corporate officer who is also one of appellant's board members and the same corporate officer as is listed in Camp Achim, Inc. Without receiving further clarification from appellant, respondent cannot be assured that it is actually appellant who is serving the role of sponsor and not one of the for-profit corporations it is enmeshed with.

In its defense, appellant submits an unsigned letter from its attorney to the Workers' Compensation Board stating that Camp Achim is being dissolved and that the not-for-profit entity of Congregation Ohr Torah will be handling its operations (appellant document #3). Such a statement is in direct contradiction to the letters dated July 14 and 29, 2011 which state that appellant is not the for-profit entity Camp Achim, Inc. and that it does not enjoy any legal connection to the for-profit corporation (appellant's documents # 4 and 5). Appellant also states that it has received documentation that Camp Achim, Inc. has sought corporate dissolution and is no longer operating the Camp Achim site (appellant's documents # 4 and 5). This documentation, however, was not provided by appellant for consideration.

Further, in my July 28, 2011 letter I specifically requested appellant to address the discrepancy that occurred when an entity by the name of Congregation Toras Achim initially

requested the appeal instead of appellant, Congregation Ohr Torah (hearing officer document # 5). In its August 1, 2011 response, appellant explained that the two congregations share one secretarial office which can lead to mistakes in forms and stationary (appellant document #1). It seems unlikely however, that this was a mistake since the stationary for both congregations, with the exception of the name, is exactly the same including font, street address, phone and fax numbers. If anything, it appears that Congregation Toras Achim is the latest exposed organization of many operating from 3 College Road, Airmont, New York. In such a circumstance, it is incumbent upon appellant to clarify the multitudinous organizations operating from the same address, with the same corporate officer and to explain the roles and responsibilities of each, thus ensuring that respondent is able to make the proper determination regarding the qualifications for a SFSP sponsor and site. In this case, appellant never properly explained why there are a myriad of corporate organizations operating from 3 College Road, Airmont, New York, which share the same corporate officer. Additionally, appellant did not explain what the relationship is among all these organizations or what role within the operation of appellant's 2011 SFSP, if any, each would play. The need for an explanation is particularly significant when at least two of the corporate organizations are for-profit, and as such they are not eligible to be SFSP sponsors (7 CFR §225.14 [b]). Therefore, I find that respondent properly denied appellant's application.

Additionally, even if appellant was approved as a 2011 SFSP sponsor, its Camp Achim site would not qualify as an approvable site for the SFSP because it is operated by Camp Achim Inc., a domestic, for-profit, business corporation. As mentioned above, the USDA recently issued guidance addressing the use of for-profit sites for the SFSP. Although that guidance makes limited exceptions, it specifically states that for-profit camps remain ineligible for participation in the SFSP (respondent's document #3). Thus, the Camp Achim site is not an approvable SFSP site.

Respondent also argues that appellant has not demonstrated that it "provides an ongoing year-round service to the community which it proposes to serve under the Program [SFSP]." This is a general requirement for an applicant sponsor to be eligible to participate in the SFSP (7 CFR §225.14[c][5]). This requirement however, has several exceptions which are listed in 7 CFR §225.6 (b)(4). Included in these exceptions are residential camps. Appellant's application is to have Camp Achim, its residential summer camp participate in the 2011 SFSP. In this case, respondent has provided evidence that appellant and Camp Achim, Inc. are so entwined it is unnecessary to require appellant to meet this requirement, when it is doing business as and intimately connected with Camp Achim, Inc. a residential summer camp which properly falls within the exception. Additionally, in its July 6, 2011 denial letter to appellant, respondent does not state that appellant failed to meet the requirements of §225.14(c)(5). Therefore, I cannot find that respondent's requirement that appellant comply with 7 CFR §225.14 (b)(4) is reasonable, nor was appellant put on notice that it was being denied for failure to comply with this provision.

CONCLUSION

I find that respondent acted in accordance with the Federal Child Nutrition Program's regulations, specifically those that pertain to the Summer Food Service Program found at 7 CFR Part 225 when it denied appellant's application to participate in the 2011 Summer Food Service Program.