

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE ADMINISTRATOR
FOOD SAFETY AND INSPECTION SERVICE

In re:)
)
Mohamed Live Poultry, Inc.,)
and Mohamed Suleman)
) STIPULATION AND
) CONSENT AGREEMENT
Respondents)

This administrative action was instituted by the delivery of a Notice of Ineligibility on March 28, 2005, to Mohamed Live Poultry, Inc., Mohamed Suleman (hereinafter "Respondents") and Hasrat Ali Khan (former manager), notifying the Respondents that they were no longer eligible for exemption privileges under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.) or the Poultry Products Inspection Act (PPIA) (21 U.S.C. section 451 et seq.). The Notice of Ineligibility was effective upon receipt, and resulted from Respondents' alleged failure to maintain their facility in a sanitary manner to ensure food safety and public health.

The aforementioned action was instituted by the Food Safety and Inspection Service (FSIS), of the United States Department of Agriculture (USDA), (hereinafter "Complainant") in accordance with Section 23(a) of the FMIA (21 U.S.C. 623(a)), Section 15 (a) of the PPIA (21 U.S.C. 464 (a)), Part 381 of the Poultry Products Inspection Regulations (9 C.F.R. 381.10 et seq.) and Part 303 of the Federal Meat Inspection Regulations (9 C.F.R. 303.1 et seq.).

The Parties have agreed that this administrative proceeding should be terminated by the execution of the Stipulation and Consent Agreement set forth below and have agreed to the following stipulations:

1. For the purpose of this Stipulation and the provisions of this Consent Agreement only, Respondents admit the jurisdictional allegations of the above-mentioned Notice of Ineligibility and all parties waive:

- (a) any further procedural steps in this proceeding;
- (b) any requirement that the Stipulation and Consent Agreement in this proceeding contains findings and conclusions with respect to fact or law, as well as to reason or basis thereof; and
- (c) all rights to seek further judicial review or to otherwise challenge or contest the validity of this Stipulation and Consent Agreement.

2. This Stipulation and Consent Agreement is for settlement purposes in this proceeding only, and does not otherwise constitute an admission or denial by the Respondents that they have violated any Federal regulation or statute.

3. Respondents waive any action against USDA under the Equal Access to Justice Act of 1980 (5 U.S.C. section 504 et seq.) for fees or other expenses incurred in connection with this proceeding.

Findings of Fact

1. Mohamed Live Poultry, Inc. is now and at all times material herein a corporation operating a custom meat exempt and retail poultry slaughtering and processing facility at 207-12 Jamaica Avenue, Queens Village, New York 11428.

2. Mohamed Live Poultry, Inc., and Mohamed Suleman are now and at all times material were operating under the custom meat exemption pursuant to Section 23(a) of the FMIA (21 U.S.C. 623(a)), Part 303 of the Federal Meat Inspection Regulations (9 C.F.R. 303.1 et seq.), and the retail store exemption pursuant to Section 15(a) of the PPIA (21 U.S.C. 464(a)), and Part 381 of the Poultry Products Inspection Regulations (9 C.F.R. 381.10 et seq.).

3. Mohamed Suleman, at all times material herein, is the President and Treasurer of Mohamed Live Poultry, Inc.

4. Mr. Hasrat Ali Khan, at all times material herein, was the General Manager of Mohamed Live Poultry, Inc.

5. On or about March 21, 2005, and other dates, Respondents allegedly violated the FMIA and PPIA by failing to maintain their exempt facility in a sanitary manner and comply with other applicable requirements as required by 9 C.F.R. 303.1 et seq. and 9 C.F.R. 381.10 et seq.

6. On March 19, 2004, FSIS issued a letter of warning to Respondents, advising them that they were operating their custom meat exempt and retail poultry slaughtering and processing facility in an unsanitary manner and in violation of the FMIA and PPIA.

7. In a Notice of Ineligibility delivered on March 28, 2005, Respondents were notified that they were no longer eligible for exemption privileges under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.) or exemption privileges under the Poultry Products Inspection Act (PPIA) (21 U.S.C. section 451 et seq.).

Conclusion

In as much as the parties have agreed to the provisions set forth in the following Consent Agreement in disposition of this proceeding, such Agreement will be issued.

Agreement

Custom meat exemption and retail poultry slaughtering and processing exemption privileges granted under the Federal Meat Inspection Act (FMIA) (21 U.S.C. § 623) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 464) and promulgated under 9 C.F.R. Sections 303.1 and 381.10 are terminated from Mohamed Live Poultry, Inc., and Mohamed Suleman and its owners, officers, directors, partners, successors, affiliates, or assigns, directly or through any corporate device, for a period of three (3) years. The termination of Respondents custom meat exemption and retail poultry slaughtering and processing exemption privileges shall be held in abeyance and custom meat exemption and retail poultry slaughtering and processing exemption privileges shall be provided to

Respondent, pursuant to Section 23(a) of the FMIA (21 U.S.C. 623(a)), Section 15(a) of the PPIA (21 U.S.C. 464(a)), 9 C.F.R. 303.1, 381.10 and Part 416, provided all regulatory requirements and the additional conditions set forth in this Agreement are met.

Conditions

1. Respondents have demonstrated, prior to reinstatement of eligibility to operate their custom meat exempt and retail poultry slaughtering and processing facility, in compliance with the FSIS statutory and regulatory requirements upon review and examination of their written operational Sanitation Performance Standards (hereinafter "SPS") (9 C.F.R. 416.1 through 416.6) and Standard Sanitation Operating Procedures (hereinafter "SSOP") (9 C.F.R. 416.12 through 416.16) and of the physical and sanitary conditions of Respondents' facility. Prior to resumption of exemption privileges, Respondents' facility shall receive an "acceptable" rating in every category of FSIS' "Exempt Establishment Review Report," FSIS Form 5930-1.2. Future reviews will be conducted at the discretion and frequency specified by FSIS officials.

Sanitation Performance Standards

2. Respondents shall comply with the requirements of 9 C.F.R. 416.1 to 416.6. Prior to resuming their exemption privileges, Respondents shall develop written procedures for SPS to describe the procedures and monitoring activities Respondents will conduct, implement and maintain, on a daily and on-going basis, during and after operations, sufficient to prevent the creation of insanitary conditions and ensure that product will not become adulterated.

Such written procedures shall include how Respondents will operate and maintain their premises, facilities, equipment and outside premises.

(a) Respondents shall monitor the soundness of their facility and structure to ensure a sanitary facility and compliance with 9 C.F.R. Sections 416.1 to 416.6. Respondents shall document findings and corrective actions to address structural and/or mechanical repairs and/or improvements to their facility under a “Planned Improvement Program” (PIP) to ensure their facility, including, their structures, rooms, and compartments are of sound construction and kept in good repair. Respondents shall make their PIP records available to FSIS for review and/or copying immediately upon request;

(b) Respondents shall develop an in-plant written pest control procedure consistent with the requirements of 9 C.F.R. Section 416.2 (a) and (b), and shall implement and maintain said procedures for in-plant and outside premises to ensure sanitary conditions, prevent conditions that may adulterate product, and prevent the harborage and breeding of pests on the grounds and within the establishment. Respondents shall (i) implement written pest control procedures; (ii) monitor daily in-plant premises (bait stations and/or traps) for rodent activity; (iii) document findings; and (iv) take appropriate corrective and preventive actions; and

(1) implement and maintain a pest management program, implemented and maintained by an independent pest control service, to prevent the harborage and breeding of pests on the grounds and within the facility consistent with 9 C.F.R. Section 416.2 (a) and (b). Respondents shall assure that (a) the pest control service reviews and services Respondents’ facility and grounds on at least a monthly frequency; (b) written reports are provided by the pest control service to Respondents

detailing its findings and recommendations of its review; (c) report recommendations are implemented by Respondents in a timely fashion; and (d) their pest management program and servicing firm's written findings, recommendations, and reports are made available to FSIS personnel for review and for copying immediately upon request.

2(c). Respondents shall implement and maintain said SPS written procedures for the duration of this Agreement and shall make all applicable records available to FSIS for review and/or copying immediately upon request.

Facility Repair/Improvements

3. Respondents shall, prior to resuming their exemption privileges, make facility repairs and/or improvements necessary to ensure sanitary conditions, as required by 9 C.F.R. Sections 416.1 to 416.6, including but not limited to:

- (a) repairing or replacing walls, floors, ceilings, doors, windows, other outside openings, to prevent the entrance of vermin, such as flies and rodents;
- (b) repairing or replacing walls, floors, and ceilings to ensure they are built of durable materials impervious to moisture and capable of being cleaned and sanitized as necessary to prevent adulteration of product or creation of unsanitary conditions;
- (c) repairing and replacing overhead structures, including ceilings and ventilation ducts, to remove the presence of product residue, grime, mold, rust, and flaking paint; and
- (d) installing ventilation adequate to control vapors and condensation to

the extent necessary to prevent adulteration of product and the creation of unsanitary conditions.

Sanitation Standard Operating Procedures (SSOP)

4. Respondents shall comply with the requirements of 9 C.F.R. Part 416. Prior to resuming their exemption privileges, Respondents shall develop written procedures consistent with 9 C.F.R. Sections 416.11 to 416.17 to describe the procedures and monitoring activities Respondents will conduct, implement and maintain on a daily and on-going basis, during and after operations, sufficient to prevent direct contamination or adulteration of product(s); and

(a) address specific procedures within their SSOP, including but not limited to, the following: (i) product contact zones; (ii) overhead condensation in production areas; (iii) floor accumulation; (iv) production practices; and (v) employee hygiene practices.

4(b). Respondents shall implement and maintain said written procedures for the duration of this Agreement and shall make all applicable records available to FSIS for review and/or copying immediately upon request.

Specified Risk Materials (SRM)/Non-Ambulatory Cattle

5. Respondents shall take action to (a) ensure that all cattle slaughtered or processed at their facility are eligible for slaughter or processing and are not adulterated, and (b) that Specified Risk Materials (SRM) are removed from any cattle slaughtered or processed at their facility.

5(a). Respondents shall develop, implement and maintain the written procedures to prevent the custom slaughtering or processing of non-ambulatory disabled cattle (downers). Respondents shall train and educate their employees in these procedures, post the procedures in an appropriate, visible area, and make the procedures and any records thereof available to FSIS for review and/or copying immediately upon request.

Custom Exempt Requirements

6. Respondents shall take action to (a) ensure that meat product does not become adulterated during processing, handling, storage, loading and unloading, and during transportation; (b) ensure that all slaughtered livestock and further processed meat or meat food products are properly marked, labeled and packaged; (c) ensure that custom prepared meat products are plainly marked "Not for Sale" and kept separate and apart from any meat products held for sale; and (d) document and maintain complete and accurate written records of the numbers and kinds of livestock slaughtered on a custom basis, the quantities and types of products prepared on a custom basis, and the names and addresses of the owners of the livestock and products, as required by 9 C.F.R. Section 303.1.

Recordkeeping

7. Respondents shall indefinitely document and maintain complete and accurate written records of (a) all records required by the FMIA, PPIA and the regulations promulgated thereunder, including bills of sale, invoices, bills of lading, and receiving

and shipping papers for all livestock and poultry purchased, and (b) all records of their SPS, PIP, Pest Control Programs, SSOP or as required by this Agreement. Respondents shall make all such records available to FSIS personnel for review and/or copying immediately upon request.

8. Respondents agree to comply with all the regulatory requirements specified under 9 C.F.R. 381.10 (d) (2) (i) through (iii) for a retail poultry slaughterer and processor and indefinitely document and maintain, complete, accurate, and legible records of daily purchases of live poultry and daily sales of poultry. Such records shall separately show each sale to household consumers and each sale to wholesale accounts, namely, hotels, restaurants and institutions (HRI); the date of the transaction, quantity (number of carcasses), including the pounds of poultry sold for each such sale, and, if a wholesale (HRI) transaction, the name and full address of each consignee. Respondents' records shall also include a line entry in the respective ledger indicating total sales made each day to household consumers and to other than household consumers (HRI). All such records shall be maintained indefinitely.

Establishment Management and Personnel

9. Respondents shall, prior to resumption of their custom meat exemption and retail poultry slaughtering and processing exemption eligibility, designate and notify the FSIS District Manager, Albany District Office, in writing, identifying one full-time person and one alternate who shall be responsible for overall implementation, coordination, monitoring, recordkeeping, review and maintenance of the facility's SPS, PIP, Pest

Control Programs, SSOP and compliance with 9 C.F.R. Sections 303.1, 381.10, 416.1 to 416.6, and the requirements of this Agreement. Said designee(s) shall be present whenever Respondent's establishment conducts any custom exempt or retail poultry slaughtering and processing exempt operations, and Respondents shall not conduct any custom meat exempt or retail poultry slaughtering and processing exempt operations in the absence of said designee(s). Respondents may name a new designated official(s) upon written notification to the Albany District Manager.

Training and Education

10. Within thirty (30) days from the effective date of this Agreement, Respondents and their employees shall complete training instruction in sanitation and food handling procedures. Respondents shall maintain the training and educational program records and make them available to FSIS personnel for review and/or copying immediately upon request.

Access and Examination

11. Respondents shall fully and completely cooperate with any USDA or FSIS investigation, inquiry, review or examination of Respondents' (a) facility, product, inventory or business records, (b) compliance with the FMIA, PPIA, the regulations issued under these Acts, or (c) compliance with the requirements in this Agreement.

11(a). Respondents shall, upon verbal notice by any FSIS or New York Department of Agriculture and Markets' representative, afford such representative access to all areas

of its places of business and opportunity to examine the facilities, inventory of meat and poultry, and records thereof, and to review and/or copy all such records.

General Provisions

12. Respondents shall not (a) commit any felony or fraudulent act; (b) violate any section of the FMIA, PPIA, Federal, State, or local statute or regulation involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated or misbranded meat or poultry product; (c) assault, intimidate, impede, or interfere with, or threaten to assault, intimidate, impede, or interfere with any representative or designee of the Secretary of Agriculture.

13. The Administrator, FSIS, may summarily terminate Respondents' custom exempt meat and/or retail poultry exemption privileges upon a determination by the Director, Evaluation and Enforcement Division, Office of Program Evaluation, Enforcement and Review, FSIS, that Respondents have failed to comply with any requirement of this Agreement and/or statutory and regulatory exemption requirements. Respondents retain the right to request an expedited hearing pursuant to the Adopted Rules of Practice concerning any violation alleged as the basis for a summary withdrawal of exemption privileges.

14. Nothing in this Agreement shall preclude (a) any future regulatory or administrative action authorized by law, regulation or otherwise, including, but not limited to the referral of any matter to any agency for possible criminal, civil, or

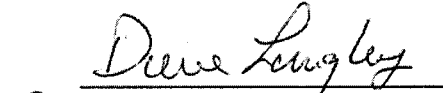
administrative proceedings.

15. If any provision of this Agreement is declared invalid, such declaration shall not affect the validity of any other provisions herein.

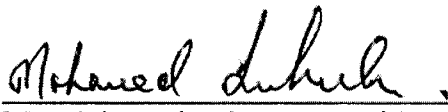
16. The provisions of this Agreement shall become effective when (a) signed by the Administrator, FSIS and (b) upon completion of an official review of the facility in which each category is found acceptable.



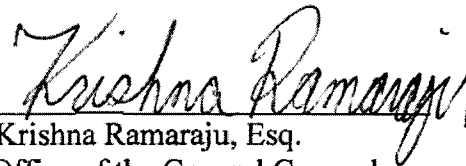
Mr. Mohamed Suleman for
Mohamed Live Poultry, Inc.



for Scott C. Safian, Director
Evaluation and Enforcement Division
OPEER, FSIS, USDA



Mr. Mohamed Suleman, President
Mohamed Live Poultry, Inc.



Krishna Ramaraju, Esq.
Office of the General Counsel
United States Department of Agriculture

Issued this 5 day of July, 2005



Dr. Barbara J. Masters
Acting Administrator
Food Safety and Inspection Service