

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

In re:)
)
 M.U.S.A. Slaughterhouses, Inc.,)
 and Mr. Musa M. Simreem,)
)
)
 Respondents)

ddd:
12-11-07
24r.
 12-10-09

STIPULATION AND
 CONSENT AGREEMENT

This administrative action was instituted by the delivery of a notice of ineligibility for custom exempt status (NOI), dated August 31, 2007, to M.U.S.A. Slaughterhouses, Inc., and Mr. Musa M. Simreem (hereinafter collectively referred to as Respondents), notifying them that they were no longer eligible for custom exemption under the Federal Meat Inspection Act (FMIA) (21 U.S.C. §§ 601 et seq.) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. §§ 451 et seq.). The notice of ineligibility resulted from Respondents' alleged failure to maintain the facility in a sanitary manner and was effective upon receipt.

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

The Parties have agreed that this administrative proceeding should be terminated by the execution of the Consent Agreement set forth below for the purposes of settlement 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 notification and both parties waive:

- (a) any further procedural steps in this proceeding;
- (b) any requirement that the Stipulation and Consent Agreement in this proceeding contain 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 the parties acknowledge that Respondents are not admitting any fault or wrongdoing on their part in the issues raised heretofore in this matter.

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

Findings of Fact

1. Respondent M.U.S.A. Slaughterhouses, Inc., is, and at all times material herein was, a business that operated a retail store and slaughtered and processed small animals and poultry pursuant to a custom exemption under section 23(a) of the Federal Meat Inspection Act (21 U.S.C. § 623(a)) and section 15(a) of the Poultry Products Inspection Act (21 U.S.C. § 464(a)) (PPIA). Respondent M.U.S.A. Slaughterhouses, Inc., is located at 3502 – 04 Third Avenue, Bronx, New York 10456.

2. Respondent Musa M. Simreem (hereinafter, respondent Simreem) is now, and at all times material herein was, the President of respondent M.U.S.A. Slaughterhouses, Inc.

3. On September 5, 2007, FSIS delivered the NOI dated August 31, 2007, to respondents, notifying them that they were no longer eligible for custom or retail store exemption under the FMIA and PPIA.

Conclusion

The respondents having admitted the jurisdictional facts set forth in paragraphs 1, 2 and 3 above, and the parties having agreed to the entry of this Consent Agreement, this Consent Agreement will be issued.

AGREEMENT

Custom meat exemption under the FMIA and retail poultry exemption under the PPIA are withdrawn from respondents Musa M. Simreem, M.U.S.A. Slaughterhouses, Inc., and its owners, officers, directors, partners, successors, and assigns for a period of two (2) years beginning on the effective date of this Agreement; Provided, however, the withdrawal of said custom and retail exemptions shall be held in abeyance, and such exemptions shall be provided to respondents, 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, 381 and 416, and the requirements of this Agreement, provided all regulatory requirements and the additional conditions set forth in this Agreement are met.

Conditions

1. Prior to the resumption of operations pursuant to custom and retail exemptions, and subject to the verification of FSIS, respondents shall demonstrate compliance with the statutory and regulatory requirements, including, but not limited 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)), and 9 C.F.R. §§ 303, 381 and 416, upon a review and examination of (a) respondents' written standard sanitation operating procedures (SSOP), specified risk material (SRM) control procedures, humane handling procedures, and other written food safety control systems, and (b) the physical and sanitary conditions at the facility of respondent M.U.S.A. Slaughterhouses, Inc. During the physical review and examination of respondents' facility, respondent M.U.S.A. Slaughterhouses, Inc., must receive a rating of "acceptable" in every category of the "Exempt Establishment Review Report," FSIS Form 5930-1.

Sanitation Performance Standards (SPS)

2. Prior to the resumption of operations pursuant to custom and retail exemptions, and subject to verification of FSIS, respondents shall:

(a) develop written procedures for monitoring, corrective action, and record keeping that respondents will implement to operate and maintain their facility at M.U.S.A. Slaughterhouses, Inc., including its outside premises, in a manner sufficient to prevent the creation of insanitary conditions and practices, to comply with the requirements of the Sanitation Performance Standards (SPS) regulations (9 C.F.R. Parts 416.1 to 416.6), and to ensure that meat and poultry products stored, prepared, and packed at said facility are not contaminated or adulterated; and

(b) address and repair, prior to the resumption of operations pursuant to custom and retail exemptions, any premises, facility, and/or equipment non-compliance issues identified by FSIS at the time of the physical facility review required by paragraph 1(b) of this Agreement.

3. Upon the resumption of operations pursuant to custom and retail exemptions, and subject to verification of FSIS, respondents shall:

(a) operate and maintain, at all times, the facility at respondent M.U.S.A. Slaughterhouses,

Inc., in a manner sufficient to prevent the creation of insanitary conditions and practices, to comply with the requirements of the Sanitation Performance Standards (SPS) regulations (9 C.F.R. Parts 416.1 to 416.6), and to ensure that meat and poultry products are not contaminated or adulterated;

(b) maintain a ventilation system adequate to control vapors and condensation and to prevent product adulteration and insanitary conditions;

(c) maintain overhead structures, including ceilings, hoists, and rails in a manner to prevent the presence of algae, mold, flaking paint, rust or other foreign material;

(d) maintain all sinks, toilets, and other plumbing fixtures in proper functioning order, to include an adequate supply of potable hot and cold running water, knee or foot controls for hand wash sinks, and properly connected drain/sewage plumbing;

(e) maintain a constant supply of hand soap and clean drying materials adjacent to all hand wash stations;

(f) provide effective floor drainage in all areas where floors are subject to discharge water or other liquid waste on the floor; and

(g) document and maintain records of the implementation and monitoring of their written SPS, and of any corrective actions.

Planned Improvement Program

4. Prior to the resumption of operations pursuant to custom and retail exemptions, and subject to verification of FSIS, respondents shall develop a "Planned Improvement Program" (PIP) to ensure that the entire structure of the facility, to include its rooms and compartments, is of

sound construction and that all equipment is maintained in proper working order and kept in good repair.

5. Upon the resumption of operations pursuant to custom and retail exemptions, and subject to verification of FSIS, respondents shall implement and maintain their PIP and document any findings and corrective actions to address structural and/or mechanical repairs and/or improvements to their facility.

Pest Management Program

6. Prior to the resumption of operations pursuant to custom and retail exemptions, and subject to verification of FSIS, respondents shall develop a written pest management program, to be implemented and maintained by an independent pest control service, to prevent the harborage and breeding of pests within the facility and on its grounds consistent with 9 C.F.R. Parts 416.2 (a) and (b) to ensure that:

(a) the pest control service reviews and services respondents' facility and grounds at least twice a month;

(b) written reports are provided by the pest control service to respondents detailing its findings and recommendations of its review; and

(c) report recommendations are implemented in a timely fashion.

7. Upon the resumption of operations pursuant to custom and retail exemptions, and subject to verification of FSIS, respondents shall:

(a) implement and maintain their pest management program in a manner sufficient to prevent the creation of insanitary conditions and practices, to prevent the harborage and breeding

of pests, and to ensure that meat and poultry products stored, prepared, and packed are not contaminated or adulterated;

(b) monitor daily in-plant premises (bait stations and/or traps) for rodent activity and document findings on a daily basis; and

(c) document and maintain records of the implementation and monitoring of its written pest management program.

Sanitation Standard Operating Procedures (SSOP)

8. Prior to the resumption of operations pursuant to custom and retail exemptions, and subject to verification of FSIS, respondents shall develop a written SSOP to describe the monitoring activities, record keeping, and other procedures that respondents will conduct, implement and maintain on a daily and on-going basis, before, during and after operations, in accordance with 9 C.F.R. parts 416.11 to 416.16, to ensure sanitary conditions and prevent product adulteration.

9. Upon the resumption of operations pursuant to custom and retail exemptions, and subject to verification of FSIS, respondents shall:

(a) implement and maintain on a daily and on-going basis their SSOP system as required by 9 C.F.R. § 416 to ensure sanitary conditions and prevent product adulteration;

(b) implement corrective and preventative actions, as required by 9 C.F.R. § 416.15, and routinely evaluate the effectiveness of their SSOP; and

(c) document and maintain records regarding the implementation and monitoring of the SSOP procedures and any corrective and preventative actions.

Humane Handling and Slaughter

10. Prior to the resumption of operations pursuant to custom and retail exemptions, and subject to verification of FSIS, respondents shall develop a written humane handling and slaughter program to ensure that any cattle, sheep, swine, or goats slaughtered or handled in connection with slaughter at their facility comply with the Act of August 27, 1958 (7 U.S.C. §§ 1901-1906), 9 C.F.R. part 313, and any Federal, state, or local laws regarding the humane treatment of animals.

11. Upon the resumption of operations pursuant to custom and retail exemptions, and subject to verification of FSIS, respondents shall:

(a) implement, on a daily and on-going basis, their humane handling and slaughter program as provided in paragraph 10 of this Agreement, and in accordance with the requirements of 9 C.F.R. part 313, to ensure humane handling of livestock; and

(b) train new employees in the implementation and monitoring of their humane handling and slaughter program.

Specified Risk Materials (SRM) and Non-Ambulatory Cattle

12. Prior to the resumption of operations pursuant to custom exemption, and subject to verification of FSIS, respondents shall develop a written specified risk material (SRM) control program, to include monitoring, verification, and record keeping procedures and corrective and preventative actions, that they will implement and maintain, on a daily and on-going basis, to ensure the control of SRMs and regulatory compliance with 9 C.F.R. parts 309, 310, 311, and 313. This program shall include detailed procedures indicating the handling of non-ambulatory disabled cattle (downers) at their facility, and the removal of non-ambulatory disabled cattle (downers) from their facility.

13. Upon the resumption of operations pursuant to custom exemption, and subject to verification of FSIS, respondents shall:

(a) implement and maintain, on a daily basis and on-going basis, their written SRM control program; and

(b) document and maintain records regarding the implementation and monitoring of their written SRM control program.

Custom Exemption Requirements

14. Upon the resumption of operations pursuant to custom exemption, and subject to verification of FSIS, respondents shall comply with custom exemption requirements in 9 C.F.R. parts 303.1 and 416 and section 23(a) of the FMIA (21 U.S.C. § 623(a)) to ensure that:

(a) meat products do not become adulterated during processing, handling, storage, loading and unloading, and transportation;

(b) all custom slaughtered livestock and further processed meat or meat food products are properly marked, labeled and packaged;

(c) custom prepared meat products are plainly marked "Not for Sale" and kept separate and apart from any meat and poultry products held for sale; and

(d) complete and accurate written records are kept and maintained 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, in accordance with 9 C.F.R. § 303.1.

Retail Exemption Requirements

15. Upon the resumption of operations pursuant to retail exemption, and subject to verification of FSIS, respondents shall:

(a) limit their poultry exemption operations to operations under the retail store exemption;

(b) comply with all regulatory retail exemption requirements in 9 C.F.R. part 381.10(d)(2)(i) through (iii) and section 15 of the PPIA (21 U.S.C. § 464) for a retail poultry slaughterer and processor and document and maintain complete, accurate, and legible records, in the English language, of daily live poultry purchases, and their daily sales of poultry;

(c) document and maintain such daily records that separately show each sale to household customers, 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;

(d) ensure that the total dollar value of poultry sales to consumers other than household consumers shall not exceed the dollar limitation per calendar year set by the FSIS Administrator, in accordance with 9 C.F.R. § 381.10(d)(2)(iii)(b);

(e) ensure that slaughtered poultry and processed poultry products do not become adulterated during processing, handling, storage, loading and unloading, and transportation;

(f) ensure that all slaughtered and/or further processed fresh poultry carcasses or parts, or their immediate packaging material are marked and/or labeled with Safe Handling Instructions, as applicable;

(g) ensure that retail slaughtered and processed poultry is strictly and solely for the personal use of the owner of the poultry product and may not be sold or donated; and

(h) ensure that the shipping containers of slaughtered and/or processed poultry products intended for HRI accounts bear appropriate labeling and Safe Handling Instructions.

Facility Management and Personnel

16. Prior to the resumption of operations pursuant to custom and retail exemptions, and subject to the concurrence of the Director, Evaluation and Enforcement Division (EED), Office of Program Evaluation, Enforcement and Review, FSIS (hereafter, Director EED), respondents shall designate in writing one full-time person and one alternate who shall be responsible for the overall implementation, coordination, monitoring, record keeping, review, and maintenance of respondents' food safety and sanitation programs and the requirements of this Agreement. Said designee(s) shall be present whenever respondents' establishment conducts any custom or retail exempt or processing operations. Respondents may name a new designated official(s) upon written concurrence from the Director EED.

Training and Education

17. Prior to the resumption of operations pursuant to custom and retail exemptions, and subject to the concurrence of the Director EED, respondents shall:

(a) develop a training program to ensure that management and employees are trained in all aspects of food safety measures and regulatory requirements, including the requirements of custom and retail exemption and the SPS, SSOP, SRM control procedures, record keeping procedures, and good manufacturing procedures relevant to each employee's position, and;

(b) provide the name(s) in writing of the instructor(s) who have been so trained and who, with the concurrence of the Director EED, shall be responsible for the training and education of respondents' employees.

18. Within twenty (20) days of the resumption of operations pursuant to custom and retail exemptions, and subject to verification of FSIS, respondents shall train all current employees and management personnel in accordance with the requirements of paragraph 17(a).

19. Respondents shall train and educate any new employee(s), consistent with the requirements of paragraph 17(a), within thirty (30) days of employment.

20. Respondents shall conduct annual training for all employees, current and new, consistent with the requirements of paragraph 17(a).

21. Respondents shall document and maintain written records of the implementation and completion of the initial and annual training for the duration of this Agreement, and make these records available to FSIS personnel for review and/or copying immediately upon such request by FSIS.

Recordkeeping

22. Respondents shall maintain full, complete and accurate written copies of all records required by the FMIA, PPIA, and the regulations promulgated thereunder, all applicable State or local statutes, and this Agreement. Respondents shall make all such records available to FSIS and/or NYDA&M representatives for review and/or copying immediately upon request.

General Provisions

23. Respondents shall not (a) commit any felony or criminal act under the FMIA or PPIA; or (b) violate any applicable section of the FMIA and PPIA, or any Federal, State, or local

statutes or regulations involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated or misbranded meat or poultry product; or (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.

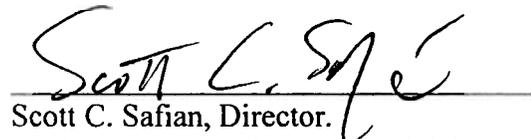
24. Respondents shall fully and completely cooperate with any USDA, FSIS or NYDA&M investigation, inquiry, review or examination of respondents' (a) facility, product, inventory or business records, (b) compliance with the FMIA, PPIA and the regulations issued under these Acts, and (c) compliance with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

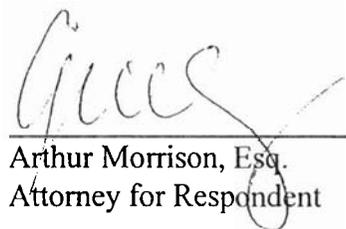
25. The parties agree that, in accordance with section 23 of the FMIA and section 15 of the PPIA, the Administrator, FSIS, may withdraw Respondents' custom and/or retail store exemptions upon a determination by the Director EED that respondents have failed to comply with any requirements of this Agreement and/or statutory and regulatory exemption requirements that are necessary to ensure food safety and protect public health. Respondents retain the right to request an expedited hearing pursuant to the adopted rules of practice concerning any violation alleged as the basis for the withdrawal of an exemption.

26. Nothing in this Agreement shall preclude any 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.

27. The provisions of this Agreement shall become effective when (a) signed by the Administrator, FSIS, and (b) upon completion of official review of the custom and retail premises of respondents' facility/business, resulting in each category of review receiving an acceptable rating.

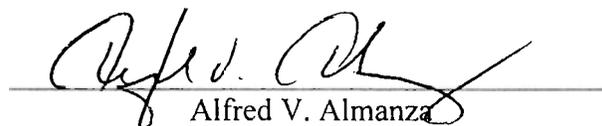

Musa M. Simreem, Corporate President of
M.U.S.A. Slaughterhouses, Inc.


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


Arthur Morrison, Esq.
Attorney for Respondent


Thomas N. Bolick
USDA Office of the General Counsel
Attorney for Complainant

Issued this 11 day of December, 2007


Alfred V. Almanza
Administrator
Food Safety and Inspection Service