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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	}	Docket No. 16-0059
	}	16-0060
	}	16-0061
Midamar Corporation	}	
Jalel Aossey, and Yahya Nasser Aossey	}	
	}	
	}	
	}	
	}	
	}	
	}	Consent Decision and Order
Respondents	}	

This proceeding was instituted under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. §§ 1621 et. seq.) (AMA), the regulations promulgated thereunder (9 C.F.R. §§ 350.1 et. seq. and 362.1 et. seq.) and applicable Rules of Practice (7 C.F.R. §§ 1.130 et. seq.) to withdraw Voluntary Reimbursable Inspection, Identification, and Certification Service from Midamar Corporation, Jalel Aossey, Yahya Nasser Aossey, and William B. Aossey, Jr., hereinafter referred to collectively as Respondents. This proceeding was commenced by a complaint filed on February 24 2016, by the Administrator of the Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA). The parties have agreed that this proceeding should be terminated by entry of the Consent Decision and Order set forth below pursuant to the consent decision provisions of the Rules of Practice (7 C.F.R. § 1.138).

[redacted]

Findings of Fact

1. Respondent Midamar Corporation, is now, and was at all times material herein, a corporation organized and existing under the laws of the State of Iowa, operating as a packaged product export facility of at 1105 60th Avenue SW, Cedar Rapids, Iowa.

2. Respondent Midamar Corporation, is now, and was at all times material herein, a recipient of Federal Voluntary Reimbursable Inspection, Identification, and Certification Service at its place of business in Cedar Rapids, Iowa, and designated as Establishment Number 18669.

3. Respondent Jalel Aossey is now, and was at all times material herein, the President, Director of Respondent Midamar Corporation.

4. Respondent Yahya Nasser Aossey is now, and was at all times an Officer and Director, of Respondent Midamar Corporation.

5. William B. Aossey Jr. is the founder, and former President of Midamar Corporation. As indicated in a March 25, 2015, Midamar letter (Attached as Exhibit 1), FSIS was informed that William B. Aossey Jr., will no longer serve as an officer or President of Respondent Midamar Corporation.

6. On September 9, 2015 in the United States District Court, Northern District of Iowa, case number CR-14-0138-LRR, Respondent Midamar Corporation entered a conditional plea of guilty to one felony count of conspiracy to cover up material facts by a scheme, to make and use false statements and documents including export certificates, to sell misbranded meat in interstate commerce, and to commit mail and wire fraud, in violation of 18 USC §371.

7. On September 11, 2015, in the United States District Court, Northern District of Iowa, case number CR-14-0138-LLR, Respondent Jalel Aossey entered a conditional plea of guilty to

[redacted]

one felony count of conspiracy to cover up material facts by a scheme, to make and use false statements and documents including export certificates, to sell misbranded meat in interstate commerce, and to commit mail and wire fraud, in violation of 18 USC §371.

7. On September 11, 2015, in the United States District Court, Northern District of Iowa, case number 14-CR-00138, Respondent Yahya Nasser Aossey entered pleas of guilty to two misdemeanor counts of making and aiding and abetting of materially false statements on export certificates, without the intent to defraud, in violation of 21 U.S.C. § 611(b)(5).

8. On July 13, 2015, in the United States District Court, Northern District of Iowa, Respondent William B. Aossey Jr., was convicted, in United States District Court for the Northern District of Iowa, case number 14-CR-00116-LRR, by jury verdict of one count of conspiracy to: cover material facts by a scheme in a matter within the jurisdiction of the Department of Agriculture, in violation of 18 USC § 1001; make and use materially false statements in a matter within the jurisdiction of the Department of Agriculture, in violation of 18 USC § 1001; make and use materially false documents in a matter within the jurisdiction of the Department of Agriculture, in violation of 18 USC § 1001; sell in commerce articles that had been misbranded with the intent to defraud, in violation of 21 USC § 610; make false statements on export certificates with the intent to defraud, in violation of 21 USC § 611; commit mail fraud, in violation of 18 USC § 1341; and commit wire fraud, in violation of 18 USC § 1343, all in violation of 18 USC § 371. William B. Aossey was also convicted of seven counts of making materially false statements on export certificates with the intent to defraud, in violation of 21 USC § 611; and seven counts of wire fraud, in violation of 18 USC § 1341.

[redacted]

Conclusion

The parties having admitted the jurisdictional facts and the parties having agreed to entry of this Order, this Order will be entered.

Order

1. Voluntary Reimbursable Inspection, Identification, and Certification Services (VRIS), under the AMA, as amended (60 Stat. 1087, as amended; 7 U.S.C. 1621 et. seq.), and as promulgated in Title 9 of the Code of Federal Regulations (C.F.R.), Parts 350 and 362, are withdrawn from Respondents, its owners, officers, directors, partners, successors, affiliates and assigns, directly or through any corporate or other device, for a period of five (5) years beginning on the effective date of this Order; Provided, however, said withdrawal of VRIS from Respondents shall be held in abeyance, and shall be provided to Respondents for so long as the conditions set forth below, in addition to all other requirements of applicable VRIS regulations and statutes, and of this Order set forth below are met and maintained.

2. Upon the effective date of this Order, and subject to verification by FSIS, Respondents shall comply with the AMA, Federal Meat Inspection Act ("FMIA"), Poultry Products Inspection Act ("PPIA"), and the regulations in 9 C.F.R. Parts 322, 350, 362, and 381 Subpart M as applicable.

Establishment Management and Personnel

3. Prior to the effective date of this Order, and subject to verification by FSIS, Respondents shall modify its responsible establishment personnel as follows:

(a) Respondent Jalel Aossey, shall be indefinitely divested, both operationally and financially of any involvement of any kind from Respondent Midamar Corporation, its successors, affiliates, and assigns; except that Jalel Aossey shall have (60) days from the

[redacted]

execution of this Order to either: (1) sell, transfer, assign, or otherwise dispose of his ownership interest in all shares of stock or other equity interest which he owns in Respondent Corporation, or (2) in accordance with the plea agreement executed on September 2, 2015 with the United States Attorney's Office for the Northern District of Iowa, place his ownership interest in all shares which he owns in Respondent Corporation into an irrevocable trust for the benefit of his family provided that the trust is administered by an independent trustee who is not affiliated with Respondent Corporation or any associated, affiliated, or successor businesses;

(b) Respondent Yahya Nasser Aossey may retain his position as Officer and Director of Respondent Midamar.

(c) By not later than the date of sentencing in Northern District of Iowa, criminal case No. 14-CR-00138-LRR, Respondent Midamar Corporation's corporate structure shall be reorganized so that Jalel Aossey and William B. Aossey, Jr., are permanently disassociated from Respondent Corporation as a partner, officer, owner or director.

(c) Respondents shall establish, appoint, hire, and execute all other positions required by this Order [Corporate Ethics and Compliance Officer, Compliance and Control Export Manager, and/or Plant Manager].

(d) Respondents shall take actions as necessary to prevent Respondent Jalel Aossey, from (i) providing direction to, (ii) exercising operational control of, (iii) being present at, (iv) conducting business for, and (v) having a financial interest in, except as described above in paragraph 3.(a), and/or (vi) otherwise exerting influence over Respondent's Midamar VRIS, including, its owners, officers, directors, partners, successors, affiliates, and assigns.

(e) Respondents shall take actions as necessary to prevent William B. Aossey, Jr., from (i) providing direction to, (ii) exercising operational control of, (iii) being present at, (iv)

conducting business for, and (v) having a financial interest in, and/or (vi) otherwise exerting influence over Respondent Midamar VRIS, including its owners, officers, directors, partners, successors, affiliates, and assigns.

(f) Respondents shall submit a new Application Approval for VRIS (FSIS Form 5200-6) reflecting required information and any changes to its business operations, including those responsibly connected with the applicant.

(g) Respondents shall provide the Director, ELD, with all records that substantiate the complete and financial divestiture of Jalel Aossey from Respondent Midamar, its owners, officers, directors, partners, successors, affiliates, and assigns.

4. Upon the effective date of this Order, and subject to verification by FSIS, Respondents shall comply with the AMA, FMIA, PPIA, and regulations in 9 C.F.R. Parts 322, 350, 362, and 381 Subpart M as applicable.

Corporate Ethics and Compliance Officer

5. Prior to the effective date of this Order, and subject to the concurrence of the ELD, Director, Respondents shall appoint or hire, a individual (other than Yahya Nasser Aossey) to the position of Corporate Ethics and Compliance Officer (hereinafter "CECO"). The CECO will be responsible, for ensuring compliance with the Order. Any changes to the CECO shall be made with the concurrence of the ELD Director. The CECO shall have the responsibility for: (a) supervising and monitoring Respondents compliance with this Order; (b) implementing the Standards of Conduct Policy and Program, and the Ethics Training established under this Order; (c) assuring that all employees are trained in food safety principles and ethics in accordance with this Order; (d) maintaining records and reports required by this Order; and (e) reporting to FSIS

[redacted]

on Respondents' compliance with the Order. The CECO may not hold any other managerial position in Respondent Corporation.

Plant Manager

6. Prior to the effective date of this Order, and subject to the concurrence of the ELD, Director, Respondents shall appoint or hire, a individual to the position of Plant Manager separate and apart from other responsible Managers. The Plant Manager will be responsible for the day to day operations.

Ethics Training and Standards of Conduct Policy and Program

7. Prior to the effective date of this Order, and subject to verification by FSIS, Respondents shall participate in and successfully complete a training program(s) or educational course(s) encompassing ethical business practices and compliance with applicable State and Federal statutes and meat and poultry regulations. Prior to participating in this course, Respondents shall submit a detailed description of the proposed training course(s) for concurrence by the Director, ELD, or designee. Respondent shall maintain for the duration of this Order records documenting the successful completion of such training and shall make those records available upon request to any FSIS program personnel.

8. Respondents shall develop and submit for review and concurrence by the Director ELD, employee Standards of Conduct Policy and Program to include, at a minimum:

(i) a statement of Respondent's commitment and of its officers, managers, and employees to comply with all statutory and regulatory export requirements, recordkeeping requirements, and other laws in the conduct of their business; (ii) guidelines for Respondents' employees to follow with respect to product export applications, shipments, and ethics issues; (ii) a statement of Respondents' policy addressing ethics and public trust; (iii) a statement of Respondents'

[redacted]

commitment to comply with Federal and State food safety and other laws in the conduct of their business, (iv) guidelines for Respondents' officers, managers, and employees to follow with respect to food safety and ethics issues; (v) measures for Respondents' officers, managers, and employees to report alleged violations of food safety, compliance, or ethics issues, or violations of company policies, to Respondents' officers or managers, without fear of reprisal and for Respondents to document and address reported allegations.

9. The Standards of Conduct Policy and Program shall be permanently displayed in a prominent location in Respondent establishment and shall be provided to and discussed with all current and future officers, managers, and employees, and shall require written acknowledgement by each individual of receipt, discussion, understanding and adherence to the policy and program.

Compliance and Export Control Program

10. Prior to the effective date of this Order, and subject to the verification of FSIS, Respondents shall develop and implement a written Compliance and Export Control Program and ensure the program includes, at a minimum:

(a) procedures for submitting applications to FSIS for export certification, along with each FSIS Form 9060-6, Application for Export Certificate, to ensure all statutory and regulatory requirements of the AMA, FMIA, PPIA, and regulations in 9 C.F.R. Parts 322, 350, 362, and 381 Subpart M are met. The procedures shall also include;

(i) requirements to request and obtain approval from the on-site FSIS program personnel prior to any re-labeling of products, or change in labeling, or change in production dates, system of coding of the production date (on-site, or at an approved off-site location, such as an outside

I.D. warehouse or approved facility contracted by Respondents to provide that service, or to export product for the Respondents) or of any deviations involving product labeling.

(ii) requirements for staging, presentation, labeling and stamping of meat and/or poultry product containers for export re-inspection, and maintenance of records for complete monitoring of all product shipments after the containers have been labeled and stamped;

(iii) requirements for completion, verification, and distribution of the original export certificate and all attached copies, and of all additional Certificates, Seals, and Certifications requested;

(iv) verification procedures to ensure that all Halal beef and poultry product used to fill orders received by Respondents originated from a designated approved slaughter facility;

(v) verification of the completed, original export certificate by FSIS program personnel; and;

(vi) corrective actions when any part of the procedure is found to be noncompliant.

(b) verification procedures to ensure that all destination country requirements have been met;

(c) verification procedures to ensure that all meat and meat food products, poultry and poultry food products intended for export as Halal comply with any restrictions imposed by the importing country;

(d) verification procedures to ensure that all Export Verification (EV) requirements, if applicable for the destination country, are obtained by Respondents, and are presented to FSIS program personnel along with each FSIS Form 9060-6, Application for Export Certificate.

[redacted]

(e) ensure written recall procedures are in place to effectively recall potentially adulterated or misbranded products sold or shipped, by Respondents when found within distribution channels.

11. Respondents shall submit its proposed Compliance and Export Control program to the Director, ELD for review and concurrence prior to its implementation. Upon implementation of the program, Respondents shall notify FSIS program personnel, in writing, for prior agency concurrence, of any proposed changes or modifications to its Compliance and Export Control Program, or any of the recordkeeping forms associated with the program.

12. Respondents shall designate in writing, subject to the concurrence of the Director, ELD, a **Compliance and Export Control Manager,** and an alternate, who shall be separate from other responsible Managers, responsible for; over all management and implementation, coordination, review, recordkeeping, and maintenance of Respondent's Compliance and Export Control Program as required by and consistent with the AMA, FMIA, PPIA, regulations, and the requirements of paragraph 10 this Order. The designated Compliance and Export Control Manager and/or alternate shall be available at all times when export operations are conducted and shall have authority to, among others;

(a) communicate directly with FSIS program personnel at all levels;

(b) make oral and written responses to noncompliance records and appeal the findings of FSIS program personnel;

(c) stop product export certification operations, remove product from further handling, and make determination regarding control of any manufactured, stored, or staged products which are believed to be adulterated, misbranded, or otherwise fail to meet regulatory requirements or destination country requirements;

[redacted]

(d) make decisions concerning product disposition, including product destruction;

(e) recall potentially adulterated or misbranded product, or product that has been falsely or fraudulently represented, or product that has been shipped and thereafter determined not to meet the destination country's requirements in any manner, to FSIS program personnel;

(f) implement, document, and maintain records for all export control procedures; and

(g) initiate corrective actions for any deviation or noncompliance related to Respondent's Compliance and Export Control Program.

Establishment Management and Employee Training

13. Prior to the effective date of this Order, and subject to verification by FSIS, Respondents shall develop a training program for all current corporate officers, management officials, employees, and future hires involved in any manner in operations involving the physical handling of meat and meat food products, poultry and poultry products, to ensure that employees are trained in the statutory and regulatory requirements of the AMA, FMIA, PPIA, and the regulations in 9 C.F.R. Parts 322, 350, 362, and 381 Subpart M, food safety measures, requirements of Respondent's Compliance and Export Control Program, SPS, and applicable labeling and recordkeeping procedures relevant to each employee's position. Respondents will provide copies of all training materials to FSIS for review and evaluation prior to the training of personnel.

14. Respondents shall train and educate any new employee(s) consistent with the requirements of this Order, within thirty (30) calendar days of employment.

15. Respondents shall conduct annual training for all relevant employees and management personnel, current and new, consistent with the requirements of paragraph 13.

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16. Respondents shall document and maintain all training and education materials, training records, test results, and other materials for all training required by this Order and make these records available to FSIS program personnel for review and/or copying immediately upon request.

Third Party Audits

17. Respondents shall, upon the effective date of this Order, cause to be made, by qualified, independent third party written audits of:

(a) Respondents' implementation, monitoring, and maintenance of its Compliance and Export Control Program;

(b) the effectiveness of Respondents' Compliance and Export Control Program to ensure all destination country requirements, to include all special export verification program requirements;

(c) Respondents' compliance with FSIS statutory and regulatory requirements;

(d) Respondents' documented actions taken as a result of information provided as described in paragraph 10 of this Order; and

(e) Respondent's compliance with the terms of this Order.

18. The audits shall be conducted, at least as frequently, as follows; the first audit shall be conducted within ninety (90) calendar days from the effective date of this Order; and subsequent audits shall be conducted every (120) calendar days thereafter for the duration of this Order.

19. Respondents shall prepare, for each audit conducted, a written response to the audit findings and recommendations. Respondent's written response shall identify;

(a) any modifications to its Compliance and Export Control Program;

(b) any corrective actions implemented;

[redacted]

(c) any other actions implemented or planned in response; and

(d) supportable information for any decision by Respondents to not implement any audit recommendation.

20. Respondents shall submit a copy of each independent third-party audit, a copy of Respondent's written response or other documentation relative to the audit to the Director ELD, for review and concurrence within (30) calendar days after each audit is completed.

Recordkeeping Provisions

21. Respondents shall record and maintain complete and accurate written records of (a) all records required to be maintained by the AMA, FMIA, PPIA, including, but not limited to, SPS, and the implementing regulations; and (b) all records required by this Order.

22. Respondents shall make all records regarding its regulated business or business activities available to FSIS program personnel for review and/or copying immediately upon such request by FSIS.

23. Respondents shall immediately notify FSIS program personnel of any changes or modifications to its SPS, corporate code, training instructions, or other programs or plans required by regulation or by this Order, including all changes to its related recordkeeping forms.

General Provisions

24. Respondents and any of the Respondents', partners, employees, agents, or affiliates shall not:

(a) violate any section of the AMA, FMIA, PPIA or regulations promulgated thereunder, any State or local statute involving the preparation, sale, transportation, distribution, attempted distribution, or exportation of any adulterated, non inspected, misbranded or deceptively packaged meat, meat food products, poultry, or poultry food products;

[redacted]

(b) commit any felony or fraudulent act or other criminal act involving fraud, forgery of official certificates, falsification or forgery of other business related records, fraud, conspiracy, bribery, or any misdemeanor involving violations of the AMA, FMIA, PPIA, or any other act or circumstances indicating a lack of integrity needed for the conduct of operations affecting public health;

(c) willfully make or cause to be made any false entry into any accounts, records, or memorandums kept by Respondents in compliance with Federal or State statutes or regulations; fail to make true and correct entries in such accounts, records or memorandums; or fail to keep such accounts that fully disclose all transactions in Respondent's business; or

(d) assault, intimidate, impede, or interfere with, or threaten to assault, intimidate, impede, or interfere with any FSIS program personnel in the performance of his or her official duties under the AMA, FMIA, PPIA, or regulations promulgated thereunder.

25. For positions which would make an individual responsibly connected to Respondents as defined by 21 U.S.C. 467(a) and 671, Respondents shall not knowingly hire or add any new individual who has been convicted, in any Federal, State, or territorial court, of any felony, or of more than one misdemeanor based upon the acquiring, handling, or distributing of unwholesome, mislabeled or deceptively packaged food, or based upon fraud in connection with transactions with food. To the extent permitted by State and Federal law, Respondents shall immediately terminate their connection with any such individual when that individual's conviction becomes known to Respondents.

26. Respondents shall fully and completely cooperate with any USDA or FSIS investigation, inquiry, review, or examination of respondent's facility, product, inventory, or

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business records; compliance with the AMA, FMIA, PPIA, and the regulations issued under these Acts; and compliance with the requirements in this Order.

Enforcement Provisions

27. The Administrator, FSIS, shall have the right to withdraw VRIS from Respondents, after an opportunity for hearing pursuant to the USDA Rules of Practice in 7 C.F.R. § 1.141, upon the determination by the Director, ELD, or his or her designee, that the Respondents have violated any conditions set forth in this Order.

28. The Administrator, FSIS, may summarily deny and withdraw VRIS from Respondents upon a determination by the Director ELD that Respondents have failed to comply with the AMA, FMIA, PPIA, and regulations issued under these Acts as applicable, or has failed to comply with one or more conditions set forth in this Order. Prior to making such a determination, the Director, ELD, shall permit Respondents an opportunity to respond to any alleged violation, both orally and in writing. The withdrawal of Respondents' VRIS shall become effective immediately upon FSIS's service of written notice, without further proceeding. Respondents shall retain the right, after any summary withdrawal of Respondents' VRIS, to request within twenty days an expedited hearing, pursuant to the applicable Rules of Practice (7 CFR subtitle A, part 1, subpart H). This does not affect Complainant's right to deny or suspend operations in accordance with 9 CFR Part 350 and 362.

29. Nothing in this Order shall preclude the referral of any violation of law to the U.S. Department of Justice for possible criminal or civil proceedings, or preclude the Administrator from taking other appropriate administrative action under the AMA, FMIA, PPIA, and the regulations promulgated there under.

[redacted]

30. If any provision of this Order is declared invalid, such declaration shall not affect the validity of any other provision herein.

31. The provisions of this Order shall be applicable for a period of five (5) years from the effective date of this Order.

32. This Order shall become effective upon issuance by the Administrative Law Judge.

MIDMAR CORPORATION
Respondent

BY: [redacted]
Jalel Aossey, President, Owner
Midamar Corporation

BY: [redacted]
Yahya Nasser Aossey, Secretary and Treasurer
Midamar Corporation

[redacted]
Attorney for Respondent

[redacted]
Scott C. Safian, Director
Enforcement and Litigation Division
Food Safety and Inspection Service
U.S. Department of Agriculture

[redacted]
Carlynne Cockrum
Attorney for Complainant
U.S. Department of Agriculture
Office of the General Counsel

Issued this 26 day of Feb 2016

at Washington, D.C.

[redacted]
Administrative Law Judge
Jill S. Clifton