



Steve Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Meat and Poultry Inspection Division

Donald H. Delozier
State Director

March 17, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Alounemay Oriental Market
Mr. Phay Keomalaythong
2601 High Point Road
Greensboro NC 27403

RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS
OF THE MEAT INSPECTION LAW
G.S. § 106-549.23

Dear Mr. Phay Keomalaythong:

Pursuant to North Carolina General Statute (G.S.) 106-549.35(c) this letter is notice of a civil penalty by the North Carolina Department of Agriculture and Consumer Services, Meat and Poultry Inspection Division (NCDA&CS). The civil penalty assessment document is attached.

Within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing in the Office of Administrative Hearings appealing the penalty assessment.

Pursuant to G.S. §150B-22, informal settlement negotiations may be initiated at any time. To negotiate a settlement of this assessment, present your offer to Mr. Donald H. Delozier, Director, Meat & Poultry Inspection Division, who may be contacted by telephone at (919) 733-4136. Settlement offers do not extend the 60 day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

-PAYMENT-

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Mr. Donald H. Delozier, Director
Meat & Poultry Inspection Division
1001 Mail Service Center
Raleigh, North Carolina 27699-1001

-APPEAL-

If you file a contested case petition, it must be in writing and in the form prescribed by G.S. § 150B-23. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-1001

Any questions about filing a petition may be directed to the Clerk of OAH by telephone (919) 733-0926. You must serve NCDA&CS by mailing a copy of the petition to:

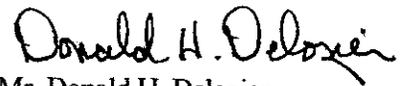
Mr. Ray Starling
North Carolina Department of Agriculture and Consumer Services
Process Agent and General Counsel
1001 Mail Service Center
Raleigh, North Carolina 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Alounemay Oriental Market
Page 3

Your attention to this matter is appreciated.

Sincerely,



Mr. Donald H. Delozier
Director, Meat & Poultry Inspection Division

DHD:aw

Attachments: Assessment Document
CC: Mr. Barry Bloch, Assistant Attorney General

IN THE MATTER OF)

Alounemay Oriental Market)

FOR VIOLATIONS OF N.C. COMPULSORY)
MEAT INSPECTION LAW)
G.S. § 106-549.23)

NOTICE OF VIOLATIONS
AND ASSESSMENT OF
CIVIL PENALTY

Acting pursuant to North Carolina General Statute (G.S.) § 106-549.35(c), Mr. Donald H. Delozier, Director, Meat and Poultry Inspection Division (MPID) of the North Carolina Department of Agriculture and Consumer Services (NCDA&CS) makes the following:

I. FINDINGS OF FACTS:

- A. On November 19, 2010, United States Department of Agriculture (USDA), Food Safety Inspection Service (FSIS) Investigator John Zeberan ("Zeberan") performed a random compliance review at Alounemay Oriental Market, 2601 High Point Road, Greensboro, NC.
- B. Zeberan spoke with Mr. Phay Keomalaythong ("Mr. Keomalaythong"), who identified himself as the owner and operator of Alounemay Oriental Market.
- C. Zeberan inspected the goods being offered for sale to the general public at Alounemay Oriental Market and discovered that some of the meat products being offered for sale lacked required labeling, rendering them misbranded.
- D. Zeberan surveyed the entire inventory of meat products on hand and found misbranded/non-inspected pork rice cakes wrapped in banana leaves.
- E. Zeberan officially detained and photographed five (5) packages, weighing approximately 2 lbs. each, of the above-referenced product, comprising the entire inventory on hand of such meat at Alounemay Oriental Market.
- F. Mr. Keomalaythong informed Zeberan in a signed Shipper's or Receiver's Certification dated November 19, 2010 that he purchased five packages of misbranded/non-inspected pork rice cakes wrapped in banana leaves daily from a lady named "Huong" for the sole purpose of resale to the general public.
- G. Mr. Keomalaythong stated that he did not know "Huong's" address nor did "Huong" supply an invoice or sales receipt for the purchase of the pork rice cakes wrapped in banana leaves but stated that her telephone number was 336-491-3564.
- H. The misbranded/non-inspected pork rice cakes wrapped in banana leaves that Mr. Keomalaythong purchased from "Huong" was packaged in clear plastic wrap which did not contain a NCDA or USDA mark of inspection or required labeling.

- I. On November 19, 2010, Mr. Keomalaythong stated that he had stored, offered for sale and sold misbranded/non-inspected meat products to the general public for approximately two months.
- J. In addition to the aforementioned activities, Alounemay Oriental Market failed to keep accurate and legible records documenting the purchase, receipt, etc. of the misbranded/non-inspected pork rice cakes wrapped in banana leaves.
- K. Alounemay Oriental Market does not operate under county, state or federal inspection.
- L. The NCDA & CS, MPID, had previously found Mr. Phay Keomalaythong, owner/operator of an additional business, Alounemay Oriental Food Store, 3136 E. Kivett Drive, High Point, NC, to be violating the North Carolina Compulsory Meat Inspection Law on:
 - a) June 22, 2001 and
 - b) May 24, 2002
- N. The North Carolina Department of Justice issued the following communications to Mr. Phay Keomalaythong, owner/operator of Alounemay Oriental Food Store concerning these previous violations listed above:
 - a) A Letter of Warning dated July 19, 2001 for the processing, offering for sale and selling of misbranded meat products on June 22, 2001 and
 - b) A Letter of Warning dated September 18, 2002 for the processing, offering for sale and selling of misbranded meat products on May 24, 2002.
- O. The NCDA & CS, MPID, had also previously found Mr. Phay Keomalaythong, owner/operator of Alounemay Oriental Market, 2601 High Point Road, Greensboro, NC, to be violating the North Carolina Compulsory Meat Inspection Law on May 18, 2007.
- P. Mr. Phay Keomalaythong, owner/operator of Alounemay Oriental Market, 2601 High Point Road, Greensboro, NC, was issued a Civil Penalty Assessment dated June 25, 2007 for the amount of \$3,000.00 for the storing, offering for sale and selling of misbranded meat products on May 18, 2007.

II. CONCLUSIONS OF LAW

- A. Alounemay Oriental Market was found to be storing, offering for sale and selling misbranded/non-inspected (no NCDA or USDA mark of inspection) meat products in violation of General Statute 106-549.23 and may be assessed a civil penalty of up to five thousand (\$5,000.00) dollars per violation under G.S. §106-549.35(c).
- B. The Commissioner of Agriculture, pursuant to G.S. §106-549.35(c) has the authority to assess civil penalties in this matter. The authority has been delegated to Mr. Donald H. Delozier, Director, Meat and Poultry Inspection Division by the Commissioner of Agriculture pursuant to G.S. §143B-10(a).

III. DECISION

As required by G.S. §106-549.35(c) in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violation of G.S. § 106-549.23.

Accordingly Mr. Phay Keomalaythong, owner./operator of Alounemay Oriental Market, is assessed a civil penalty of:

\$ 3,000.00 for violating G.S. § 106-549.23
\$ 3,000.00 TOTAL AMOUNT ASSESSED.

March 17, 2011
Date

Donald H. Delozier
Mr. Donald H. Delozier, Director
Meat and Poultry Inspection Division

|

III. DECISION

As required by G.S. §106-549.35(c) in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violation of G.S. § 106-549.23.

Accordingly Mr. Phay Keomalaythong, owner./operator of Alounemay Oriental Market, is assessed a civil penalty of:

\$ 3,000.00 for violating G.S. § 106-549.23
\$ 3,000.00 TOTAL AMOUNT ASSESSED.

March 17 2011
Date

Donald H. Delozier
Mr. Donald H. Delozier, Director
Meat and Poultry Inspection Division