

Canada Agricultural
Review Tribunal



Commission de révision
agricole du Canada

K1A 0B7

Citation: *Saleh v Canada Border Services Agency*, 2019 CART 19

Docket: CART-2133

BETWEEN:

SALEH

APPLICANT

- AND -

CANADA BORDER SERVICES AGENCY

RESPONDENT

BEFORE: Luc Bélanger, Chairperson

**WITH: Mr. Ahmed Saleh representing the Applicant; and
Ms. Tara-Lee Fraser representing the Respondent**

DECISION DATE: December 2, 2019

1. INTRODUCTION

[1] This matter concerns the request for review of Notice of Violation (NOV) # 4312-19-0250 pursuant to subsection 9(2)c) of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#) (AAAMP Act). On June 6, 2019, the Applicant was served with this NOV upon his arrival at the Ottawa International Airport, for importing 1,4 kg of ghee pure butter which was not reported. Thereby, contravening to subsection 16(1) of the [Health of Animals Act](#). The NOV was issued with a penalty of \$1,300 by the Canada Border Services Agency.

[2] To determine the admissibility of this request for review, I must evaluate whether the Applicant satisfies the admissibility threshold established by the [AAAMP Act](#), the [Agriculture and Agri Food Administrative Monetary Penalties Regulations](#) (AAAMP Regulations) and the [Rules of the Review Tribunal \(Canada Agricultural Review Tribunal\)](#) (Tribunal Rules).

[3] For the following reasons, I found the Applicant's request for review not admissible since the Applicant failed to file a request for review within the prescribed time and manner, and thereby not meeting the admissibility threshold.

2. BACKGROUND

[4] On June 14, 2019, the Applicant filed a request for review of the NOV to the Tribunal by registered mail.

[5] On June 17, 2019, the Tribunal sent a first acknowledgement letter to both parties requesting them to comply with rules 30 and 31 of the [Tribunal Rules](#) before or on July 3, 2019.

[6] On June 21, 2019, the Applicant sent an email to inform the Tribunal that he would be out of the country for a long period of time and requesting whether the review may proceed online.

[7] On June 26, 2019, as a response, the Tribunal sent a letter explaining to the Applicant that the review may be conducted orally or through written submissions, which may include an oral hearing in person, via teleconference or videoconference in accordance with subsection 15(2) of the [AAAMP Regulations](#).

[8] On June 27, 2019, the Respondent complied with rule 30 of the [Tribunal Rules](#), by filing to the Tribunal a copy of the NOV and confirming in writing that the penalty associated to the NOV was still owed.

[9] On July 2, 2019, the Applicant sent an email to the Tribunal communicating his election of the method of review, which was to proceed by written submissions.

[10] On July 4, the Tribunal sent a second and final acknowledgement letter asking the Applicant once again to comply with rule 31 of the [Tribunal Rules](#) before or on July 19, 2019.

[11] On July 19, 2019, the Applicant sent an email to the Tribunal requesting further information on the request process.

[12] On July 22, 2019, the registry of the Tribunal replied to the Applicant's request, by sending a detailed email, explaining to the Applicant that before modifying, cancelling or upholding a notice of violation, the Tribunal must conduct a full review of the facts and the law of the matter.

[13] Since this correspondence, the Applicant has not replied, communicated with the Tribunal or complied with rule 31 of the [Tribunal Rules](#).

3. ISSUE

[14] Did the Applicant meet the admissibility threshold set out in the [AAAMP Act](#) and its regulations? Which consist of three requirements:

1. filing the request for review in the prescribed time and manner;
2. the non-payment of the penalty associated to the notice of violation, and;
3. providing the required information and motifs of the request for review under the [Tribunal Rules](#).

4. ANALYSIS

[15] Before the Tribunal proceeds to a full hearing of a matter, the Tribunal must render a decision on the admissibility of the Applicant's request for review pursuant to rule 32 of the [Tribunal Rules](#).

[16] A request for review is a right that Parliament extends to applicants which allows them, for a very limited expenditure of time and money, to have a notice of violation or a Minister's decision upholding the notice of violation, reviewed by an independent body. However, when played out to its full conclusion, including the filing of pleadings, the holding of a hearing and the issuance of a decision, considerable time and money from all parties, will be expended.

[17] Therefore, when submitting a request for review the Applicant must meet some basic requirements established by the legislator in order for this right to be preserved.

[18] Absolute bars to admissibility arise when the applicant has already paid the penalty associated to the NOV, or has failed to file the request for review within the prescribed time and manner as set in the [AAAMP Act](#), [AAAMP Regulations](#) and [Tribunal Rules](#).

[19] In the context of a request for review of a notice of violation, the Applicant must deliver its request in the permitted mode of transmission and within 30 days after the date which the notice is served, pursuant to subsection 11(b) of the [AAAMP Regulations](#).

[20] Furthermore, the Applicant may make a request for review of a notice of violation by delivering it by hand or by sending it by registered mail, courier, fax or other electronic means to the Tribunal, pursuant to subsection 14(1) of the [AAAMP Regulations](#).

[21] The Applicant met these two first requirements on June 14, 2019.

[22] However, once the Applicant has filed its request in the time and matter prescribed by the law, he is required to provide essential information in order for its matter to proceed pursuant to rule 31 of the [Tribunal Rules](#).

[23] Notwithstanding the additional time granted by the Tribunal, the Applicant failed to comply with the [Tribunal Rules](#) and provide his personal information, the details related to his representation, his reasons for the request for review, as well as his choice of official language for the proceeding.

5. ORDER

[24] By failing to bring forward its request for review in the prescribed time and manner by the [Tribunal Rules](#), the Applicant is deemed to have committed the violation of subsection 16(1) of the [Health of Animals Act as](#) indicated in the NOV, pursuant to subsection 8(2) of the [AAAMP Act](#).

[25] I therefore **ORDER** that the request for review of the NOV is inadmissible, and pursuant to this order be dismissed.

[26] Finally, I wish to inform the Applicant that this violation is not a criminal offence. After five years, he is entitled to apply to the Minister of Public Safety and Emergency Preparedness to have the violation removed from the records, in accordance with section 23 of the [AAAMP Act](#).

Dated at Ottawa, Ontario, on this 2nd day of December 2019.

(Original signed)

Luc Bélanger
Chairperson
Canada Agricultural Review Tribunal