Canada Agricultural Review Tribunal
Commission de révision agricole du Canada
Ottawa, Canada
K1A 0B7

Citation: *1123418 B.C. Ltd. v Canadian Food Inspection Agency,* 2023 CART 12

Docket: CART-2022-FNOV-028

BETWEEN:

1123418 B.C. LTD.

APPLICANT

- AND -

CANADIAN FOOD INSPECTION AGENCY

RESPONDENT

BEFORE: **Emily Crocco, Chairperson**

WITH: **JiXiao Xue, representing the Applicant; and Albert Lee, representing the Respondent**

DECISION DATE: **March 31, 2023**

HEARD BY WRITTEN SUBMISSIONS

1. INTRODUCTION/BACKGROUND

[1] On September 5, 2022, the Respondent served the Applicant with a Notice of Violation ("Notice") with a penalty of $10,000.00 for importing a prohibited thing, namely cherries from Japan, contrary to subsection 42(2) of the *Plant Protection Regulations* (the *Plant Protection Regulations*).

[2] For the reasons that follow, I find that the Respondent has proven that the Applicant committed the violation, that the Applicant has failed to raise a permissible defence, and that the amount of the penalty was established in accordance with the regulations.

2. RELEVANT LEGISLATION

[3] Pursuant to paragraph 7(1)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (*AAAMP Act*), a person who contravenes its Regulations may receive a warning or penalty.

[4] Subsection 42(2) of the *Plant Protection Regulations* states that:

> No person shall import into Canada a thing that the Minister or an inspector has prohibited from entering Canada in writing, or in a permit where the permit prohibits the importation of that thing.

[5] The Respondent's Automated Import Reference System (AIRS) states that importing Japanese cherries is prohibited unless prior approval is obtained.

[6] The following essential elements need to be proven by the Respondent to establish that the Applicant violated subsection 42(2) of the *Plant Protection Regulations*:

1. That the Applicant is the person identified in the Notice;
2. That the Applicant imported a thing; and

3. That the minister or an inspector has prohibited in writing the importation of the thing into Canada.

[7] Sections 5 and 6 and Schedules 2 and 3 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (*AAAMP Regulations)* set out how penalties are to be calculated.

[8] Given the requirements in the *Plant Protection* and *AAAMP Regulations* and in AIRS, and the Respondent's uncontested and well-supported evidence in the record on these issues, I determine three things on a balance of probabilities.

i) The Applicant is the person identified in the Notice.

ii) The Applicant did not declare that he was importing Japanese cherries and did not have prior approval to import Japanese cherries.

iii) If the violation is established, the Respondent properly calculated the amount of the penalty.

3. ISSUES

[9] The issues in dispute are whether the Applicant actually imported Japanese cherries and, if so, whether he has raised any permissible defences.

4. ANALYSIS

(a) The Applicant Imported Japanese Cherries

[10] On April 22, 2022, someone submitted an online complaint to the Respondent about a British Columbia restaurant that had posted photos of Japanese cherries to its Instagram webpage.

[11] As a result, over several days over the ensuing weeks, the Respondent interviewed the managers of that restaurant and a local grocer who told them that the Applicant had given or sold them a total of four boxes of Japanese cherries.

[12] During this time period, the agents also spoke with the Applicant. He told the agents that his supplier had sent him four or five cases of the cherries. Of these, he gave one case to his son and the balance to his clients.

[13] The Applicant told the Respondent's agents that he had not declared the cherries because he presumed that the usual importation rules did not apply because the cherries were intended for "personal use". He also acknowledged knowing about, and having failed to consult, an online tool called the "Automated Import Reference System" (AIRS) before importing the cherries.

[14] In an email from the Applicant to one of the Respondent's investigators on June 23, 2022, the Applicant wrote that he had "asked [his supplier] to send" the cherries. He repeated that he did not declare the cherries because they were given to him as a gift, and he did not think he had to declare products he was importing for personal use.

[15] Contrary to what he told the Respondent's agents, in his submissions to the Tribunal, the Applicant denied importing Japanese cherries. He wrote that he locally buys and repackages the cherries he sells.

[16] In support of this, the Applicant provided a letter dated December 6, 2022, from the client whose Instagram photos of cherries had been sent to the Respondent as evidence against the Applicant. In her letter, the client wrote that the photos of the Japanese cherries she had posted online were "downloaded from the internet, the actual cherry we bought from [the Applicant] was similar but not exactly the same."

[17] The letter from this client is not helpful to the Applicant. It also does not contradict that the cherries the Applicant sold her were Japanese. It does not address what the Applicant told the client about how he obtained the cherries.

[18] Moreover, the resale of local cherries and the importation of Japanese cherries are not mutually exclusive activities. In other words, even if the Applicant resold local cherries to this client on some earlier occasion, this same client and another client, and the Applicant himself, told the Respondent that he had imported Japanese cherries.

[19] Finally, the Applicant submitted to the Tribunal that he had falsely admitted to importing Japanese cherries to the Respondent. He wrote that he had become scared of the Respondent after unfairly receiving a 2018 Notice of Violation with a Warning.

[20] I attach little weight to this submission. There is no evidence that the Respondent's agents were abusive with the Applicant. Moreover, the Applicant vigorously defended his importation of Japanese cherries when he spoke with the Respondent's agents. Finally, the information the Applicant provided in his email to the Respondent and his conversations with the Respondent's agents are consistent with what two of his customers separately told the Respondent's agents.

[21] As a result, I conclude the Applicant imported Japanese cherries.

(b) The Applicant's Defences

[22] The *AAAMP Act* creates an absolute liability regime. This means that where a respondent proves that an applicant committed the prohibited act (in this case, importing Japanese cherries), there are very few defences or legal reasons to relieve the applicant of responsibility for committing the violation.

[23] Subsection 18(1) of the *AAAMP Act* explicitly excludes the defences of due diligence (I did my best) and mistake of fact (I was mistaken).

[24] As a result, the Applicant's argument that he was unaware of the rules regarding the importation of Japanese cherries is not a permissible defence.

5. CONCLUSION

[25] Given the above determinations, I conclude that the Respondent has established that the violation occurred as alleged. I further conclude that the Applicant did not establish a permissible defence.

[26] As a result, the Applicant must pay the $10,000.00 penalty to the Respondent within sixty days of notification of this decision.

[27] This violation is not a criminal offence. In accordance with section 23 of the *AAAMP Act*, five years after the date on which the Applicant pays the penalty, he has the right to apply to the Minister of Agriculture and Agri-Food to have the violation removed from the records.

Dated on this 31st day of March 2023.

Emily Crocco

Emily Crocco
Chairperson
Canada Agricultural Review Tribunal