

**AGRICULTURE AND AGRI-FOOD ADMINISTRATIVE
MONETARY PENALTIES ACT**

DECISION

In the matter of an application for a review of the facts of a violation of provision 40 of the *Health of Animals Regulations*, alleged by the Respondent, and requested by the Applicant pursuant to paragraph 9(2)(c) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

Ashraf Amin Akbari, Applicant

-and-

Canada Border Services Agency, Respondent

CHAIRMAN BARTON

Decision

Following an oral hearing and a review of the written submissions of the parties including the report of the Respondent, the Tribunal, by order, determines the Applicant committed the violation and is liable for payment of the penalty in the amount of \$200.00 to the Respondent within 30 days after the day on which this decision is served.

REASONS

The Applicant requested an oral hearing pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Penalties Regulations*.

The oral hearing was held in Vancouver on October 5th, 2006.

The Applicant made her own submissions.

The Respondent was represented by its Senior Technical Advisor, Ms. Joy Hearnden.

At the outset of the hearing, I reviewed the following key documentation in this file:

- Notice of Violation dated October 13th, 2005.
- Request for a review from the Applicant received by the Tribunal on October 18th, 2005.
- The report of the Respondent received by the Tribunal on October 28th, 2005.
- Letter from the Applicant dated November 9th, 2005, with further submissions, along with a letter from her family physician dated November 24th, 2005.

Upon ascertaining both parties had copies of these documents, they were entered on the record as evidence for the purpose of the hearing.

The Notice of Violation # 030899 dated October 13, 2005, alleges that the Applicant, on or about 18:00 hours on the 13th day of October, 2005, at Vancouver Int'l Airport, in the province of British Columbia, committed a violation, namely: "Import an animal by-product to wit: meat, without meeting the prescribed requirements " contrary to provision 40 of the *Health of Animals Regulations* which states:

40. No person shall import into Canada an animal by-product, manure or a thing containing an animal by-product or manure except in accordance with this Part.

.../3

In general, *Part IV* of the *Health of Animals Regulations* permits importation into Canada

of most animal by-products, if the country of origin is the United States. If the country of origin is other than the United States, importation into Canada is only permitted (except for certain specified products such as gluestock and bone meal, for which there are other specific requirements) if the importer meets one of the following four prescribed requirements of *Part IV* of the *Health of Animals Regulations*, namely:

1. Under subsection 41(2) if the country of origin has a disease-free designation and the importer produces a certificate signed by an official of the government of the country of origin that shows that the country of origin is the designated country referred to in the disease-free designation.

No such certificate was provided.

2. The importer meets the requirements of subsection 52(1) which provides as follows:

52.(1) Notwithstanding anything in this Part, a person may import an animal by-product if the person produces a document that shows the details of the treatment of the animal by-product and the inspector is satisfied, based on the source of the document, the information contained in the document and any other relevant information available to the inspector and, where necessary, on an inspection of the animal by-product, that the importation of the animal by-product into Canada would not, or would not be likely to, result in the introduction into Canada, or the spread within Canada, of a vector, disease or toxic substance.

No such document was produced.

3. The importer has acquired an import permit pursuant to subsection 52(2) which states:

52.(2) Notwithstanding anything in this part, a person may import an animal by-product under and in accordance with a permit issued by the Minister under section 160.

No such permit was tendered.

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4. The importer has presented the animal by-product for inspection and a satisfactory inspection has been carried out under paragraph 41.1(1)(a) which

states as follows:

41.1(1) Notwithstanding section 41, a person may import into Canada an animal by-product or a thing containing an animal by-product, other than a thing described in section 45, 46, 47, 47.1, 49, 50, 51, 51.2 or 53, if

(a) an inspector is satisfied on reasonable grounds that the animal by-product is processed in a manner which would prevent the introduction into Canada of any reportable disease or any other serious epizootic disease to which the species that produced the animal by-product is susceptible and which can be transmitted by the animal by-product, provided that the animal by-product or the thing containing the animal by-product is not intended for use as animal food or as an ingredient in animal food.

No inspection of this nature took place.

The Respondent did not call any witnesses, relying on its written submissions.

In her written submissions and oral evidence, the Applicant admitted importing meat (some cold cuts) and cheese for a value of about \$8.00 from Madrid in order to have regular meals during her trip. Due to a medical condition, the Applicant indicated she is unable to eat airplane food and must prepare her own food daily.

She further testified that she was both exhausted due to the long trip and anxious because of losing her luggage. She had asked the person next to her on the airplane to help her fill out the *Customs Declaration Form E-311* as she had difficulty reading and writing English.

Unfortunately for the Applicant, these violations are in the nature of “strict-liability” violations and the reasons given by the Applicant for not complying with the prescribed *Regulations* are not defences by virtue of subsection 18(1) of the *Agriculture and Agri-Food Monetary Penalties Act* which states as follows:

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18.(1) A person named in a notice of violation does not have a defence by reason that the person

- (a) exercised due diligence to prevent the violation; or
- (b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

In these circumstances the Tribunal has no option but to find that the Respondent has established, on a balance of probabilities, that the Applicant committed the violation.

The Applicant stated she had never broken the law and had no intention of doing so in this case. I have no reason to doubt the veracity of this statement.

I wish to point out to the Applicant that this is not a criminal or a federal offence but a monetary violation, and that she has the right to apply after 5 years to have the notation of this violation removed from the Minister's records in accordance with subsection 23(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, which states as follows:

23. (1) Any notation of a violation shall, on application by the person who committed the violation, be removed from any records that may be kept by the Minister respecting that person after the expiration of five years from

- a) where the notice of violation contained a warning, the date the notice was served, or
- b) in any other case, the payment of any debt referred to in subsection 15(1),

unless the removal from the record would not in the opinion of the Minister be in the public interest or another notation of a violation has been recorded by the Minister in respect of that person after that date and has not been removed in accordance with this subsection.

.../6

Dated at Ottawa this 26th day of October, 2006.

Thomas S. Barton, Q.C., Chairman