

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

DECISION

In the matter of an application for a review of the Minister's decision that the Applicant committed a violation pursuant to subsection 16(1) of the *Health of Animals Act*, and requested by the Applicant pursuant to paragraph 13(2)(b) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

Can Tho International Trading Ltd., Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following a review of the Minister's decision dated July 7, 2004, and all information relating to the violation, the Tribunal by order, sets aside the Minister's decision.

REASONS

The Applicant did not request an oral hearing.

This is not a review of the facts of the violation but rather a review of the Minister's decision.

In order to vary or set aside the Minister's decision, the Review Tribunal must find that there has been a jurisdictional error or an error of law. The following are some general examples of grounds for relief:

1. Powers are exercised in bad faith.
2. Powers are improperly delegated.
3. Powers are exercised without regard to natural justice or fairness.
4. Powers are exercised for improper purposes.
5. There is no evidence before the Minister to support the decision.
6. A decision is based upon irrelevant considerations.
7. An error is made in the interpretation of related or governing legislation, common law principles generally, or as the principles apply to the facts.
8. A decision is so unreasonable that any reasonable person in the Minister's position could not have made it.

Based on the documents contained in the Respondent's file, and on a letter from Mr. Trac Duong dated October 14, 2003 requesting a review, the Minister concluded that Can Tho International Trading Ltd. does business as "My Tho Supermarket".

The October 14th, 2003 letter indicates that Mr. Trac Duong signed in his personal capacity as representing both Can Tho International Trading Ltd. and My Tho Supermarket. Contrary to the Minister's conclusion, this letter does not provide any

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evidence that My Tho Supermarket is being carried on by Can Tho International Trading

Ltd. If anything it may provide evidence that My Tho Supermarket is carried on by Mr. Duong.

Further, the Respondent's record shows that the other name appearing frequently in the file, "My Tho Market," is registered under the British Columbia Corporate Registry as being carried on by Thanh Hong Nguyen.

"My Tho Market" and "My Tho Supermarket" appear to be used synonymously in the pertinent trading documents in the Respondent's file, including the waybill, confirmation of sale, import permit, invoice, and request for release.

No corporate search was done for "My Tho Supermarket".

Apart from its name appearing on the top of the October 14, 2003 letter, there is no evidence linking Can Tho International Trading Ltd. to the alleged violation.

Accordingly, the Tribunal finds that the Minister was wrong in concluding that Can Tho International Trading Ltd. does business as "My Tho Supermarket" and finds there is no evidence in the Respondent's file to establish that the Applicant committed the alleged violation.

Dated at Ottawa this 16th day of September 2004.

Thomas S. Barton, Q.C., Chairman