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 16(1) of the *Health of Animals Act*, alleged by the Respondent, and requested by the Applicant pursuant to subsection 8(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act.*

Ira J. Bridger, Applicant

-and-

Canada Border Services Agency, Respondent

CHAIRMAN BARTON

Decision

Following a review of the submissions of the parties, the Tribunal, by order, determines the Applicant committed the violation.

REASONS

The Applicant did not request an oral hearing.

The Notice of Violation #YOW-07-0082 dated December 6th, 2007, alleges that the Applicant, on or about 19:00 hours on the 6th day of December, 2007, at Ottawa International Airport, in the province of Ontario, committed a violation, namely: "Fail to present an animal or thing" contrary to subsection 16(1) of the *Health of Animals Act* which states:

> 16. (1) Where a person imports into Canada any animal, animal product, animal byproduct, animal food or veterinary biologic, or any other thing used in respect of animals or contaminated by a disease or toxic substance, the person shall, either before or at the time of importation, present the animal, animal product, animal by-product, animal food, veterinary biologic or other thing to an inspector, officer or customs officer who may inspect it or detain it until it has been inspected or otherwise dealt with by an inspector or officer.

Following a vacation in Florida, the Applicant and his wife returned to Canada with their pet miniature poodle. The poodle accompanied them on the plane and during the customs inspection process, was carried in an airline-approved shoulder held bag with a mesh front. No attempt was made to conceal the dog from the customs inspectors.

While waiting for their luggage after going through primary inspection, a canine officer found they were carrying a dog that was not declared on the Customs Declaration Form E311.

The Applicant received a Notice of Violation for importing an animal into Canada without presenting the animal for inspection.

The Applicant contends that he and his wife were not importing an animal, but were simply returning with their pet, which they had brought to Florida with them in November and for which they carried Canadian veterinarian certificates.

The Applicant further contends that there is ambiguity in the language used in the Customs Declaration Form E311. In his view, the term "bringing into Canada" applies to something other than imported goods, such as a variety of personal articles that he took out of Canada when he first left. In other words, he does not consider bringing back his pet dog to Canada as being the importation of an animal into Canada.

Although I consider the terms "import into Canada" and "bring into Canada" to be synonymous, this is not the first case where Applicants have been confused by the terminology used in the Customs Declaration Form E311.

However, the pet miniature poodle is clearly an animal, and when the Applicant and his wife brought their dog back into Canada, they were importing it into Canada and did not present it for inspection.

Unfortunately for the Applicant, detailed lack of knowledge of the importation laws is not a defence to the violation.

Accordingly, the Respondent has established, on a balance of probabilities, that the violation was committed.

The Tribunal wishes to point out to the Applicant that this is not a crime or an offence, but is a monetary violation, and that he 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
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> > 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),
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> 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.

In his written material, the Applicant wishes to know how this violation may impact upon his travel plans in the future, and whether he would be placed on a "watch list", or be "red-flagged".

If these questions were posed to the Respondent, I would expect he would receive an appropriate response.
Dated at Ottawa this 25th day of March, 2008.

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Thomas S. Barton, Q.C., Chairman