

**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 section 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*.

**Hanna Viksich, Applicant**

**-and-**

**Canadian Food Inspection 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 Monetary Penalties Regulations*. The oral hearing was held in Edmonton on November 16, 2004.

The Applicant was represented by her son, Mr. Ruslan Viksich.

The Respondent was represented by its solicitor, Ms. Vickie McCaffrey.

The Notice of Violation dated July 20, 2004, alleges that the Applicant, on or about 16:45 hours on the 20th day of July, 2004, at Calgary, in the province of Alberta, committed a violation, namely: “import an animal by-product, to wit: meat, without meeting the prescribed requirements” contrary to section 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.

The undisputed evidence is that the Applicant imported a quantity of lamb fat into Canada from the Ukraine without meeting the requirements of section 40. The Applicant was unaware of these requirements, and was not conversant in the English language.

The Applicant alleges that her request to speak to someone who understood Ukrainian was ignored and that other items from her luggage such as some oak bark, wooden souvenirs and cigarettes were thrown in the garbage without explanation.

The Tribunal has no doubt that the Applicant would have complied with the rules, had she known them.

However, the fact that the Applicant was unaware of the *Regulations* is not a defence to the violation by reason of subsection 18(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* which states as follows:

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 the facts that, if true, would exonerate the person.

Further, as explained to the Applicant at the hearing, the Tribunal has no authority to deal with the Applicant's allegations of mistreatment, its jurisdiction limited to determining whether or not a violation took place, and if so, whether the penalty was properly assessed in accordance with the *Regulations*.

Having admitted to the violation, the Tribunal has no option but to find the Applicant committed the violation and is liable for payment of the penalty assessed.

Dated at Ottawa this 23<sup>rd</sup> day of November, 2004.

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Thomas S. Barton, Q.C., Chairman