

**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 76(1)(a) 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*.

Troy Empey, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following an oral hearing and a review of all oral and written submissions, the Tribunal, by order, determines the Applicant committed the violation and is liable for payment of the penalty in the amount of \$400.00 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 hearing was held on June 10, 2008, in London, Ontario.

The Applicant was not represented and made his own submissions.

The Respondent was represented by its counsel, Mr. Samson Wong.

Evidence for the Respondent was given by Dr. Julia Privorozky and Dr. Tom Cox.

The Notice of Violation # 0708ON1004 dated October 25th, 2007, alleges that the Applicant, between the 1st and 31st of October, 2005, at Putnam, in the province of Ontario, committed a violation, namely: “Move or cause to be move a Cervidae without a permit. To witt: did transport one white tailed female deer from a restricted herd to the premise of Larry Weller and failed to ensure a movement permit at the time of movement ” contrary to provision 76(1)(a) of the *Health of Animals Regulations*. Subsection 76(1) reads as follows:

76.(1) No person shall, without a permit issued by the Minister under section 160, move, or cause to be moved,

(a) a member of the Cervidae family from one place in Canada to another place in Canada;

(b) a bovine from a tuberculosis-accredited to a tuberculosis-accredited advanced area or a tuberculosis-free area;

(c) a bovine from a tuberculosis-accredited advanced area to a tuberculosis-free area; or

(d) a bovine from a brucellosis-accredited area to a brucellosis-free area.

Having confirmed both parties had copies, the following documents were entered on the record as evidence for the purpose of the hearing:

- Notice of Violation #0708ON1004 dated October 25th, 2007;
- Letter dated November 30th, 2007, from the Applicant requesting a review;
- Letter dated December 19th, 2007, from the Respondent enclosing its report;
- Letter received by the Tribunal on January 10th, 2008, from the Applicant with submissions;
- Letter dated May 27th, 2008, from counsel for the Respondent attaching earlier correspondence to the Applicant;
- Letter dated May 29th, 2008, from counsel for the Respondent attaching an earlier Inspector's report and information regarding the "Captive Ungulate Program".

At the request of counsel for the Respondent, there being no prejudice to the Applicant, I allowed two amendments to the Notice of Violation. The first was to change the place of the alleged violation from Putnam to Mount Elgin, and the second was to change the section box of the Notice of Violation from the *Health of Animals Act* to the *Health of Animals Regulations*.

Based on the written evidence, and subject to viva voce evidence, counsel for the Respondent indicated he was unable to establish that the alleged violation was carried on in the course of business or to obtain a financial benefit, and accordingly requested that the Notice of Violation be further amended to reduce the amount of the penalty from \$2,000.00 to \$400.00. I approved this amendment as there was no evidence during the oral hearing to the contrary.

Date of Violation

The written and oral evidence of Dr. Privorozky, and the written evidence of Dr. Alsop was that, in an interview on January 11th, 2007, at the Weller's premises, both Mr. Weller and the Applicant indicated the deer was transported in October 2005.

In his oral evidence, the Applicant indicated he gave this date in haste, and after further reflection, thought it was in 2006, when his other two deer were moved. This would have been between March 13th, 2006 and April 11th, 2006. There being no prejudice to the Applicant, I will allow another amendment to the Notice of Violation, changing the date of the violation from October 1-31, 2005, to March, 2006.

Transportation Permit

The Applicant testified that he verbally requested a transportation permit for this animal from Dr. Cox and that he received verbal permission to transport the animal on the understanding he would later receive a permit.

On the other hand, Dr. Cox testified that he could not have provided that permission to the Applicant as, at the time, the Applicant's herd was a restricted herd (became restricted in September 2004) and that no permit could be given in those circumstances unless the transportation was to a testing facility or to a slaughter house.

On this point, the evidence of Dr. Cox is more compelling.

The fact remains, as admitted by the Applicant, that at the time of transportation of the deer to the Weller's premises, the Applicant did not have a transportation permit. Even if the Applicant reasonably and honestly believed that, as a result of his discussion with Dr. Cox, he would be receiving a permit, this is not a defence to a violation by reason of subsection 18(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, which reads 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 facts that, if true, would exonerate the person.

Accordingly, I am satisfied the Respondent has established, on a balance of probabilities, that the Applicant committed the violation.

Dated at Ottawa this 25th day of June, 2008.

Thomas S. Barton, Q.C., Chairman