

**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*.

**Wayne Scott, 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 \$2,000.00 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 submissions on his own behalf.

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

Evidence for the Respondent was given by Dr. Janet Alsop, Dr. Julia Privorozky, and Dr. Dan Dewitt.

The Notice of Violation #0708ON1001 dated October 25<sup>th</sup>, 2007, alleges that the Applicant, between the 1<sup>st</sup> and 30<sup>th</sup> of June, 2006, at Princeton, in the province of Ontario, committed a violation, namely: “Move or cause to be move a Cervidae without a permit. To witt: purchasing of two elk bearing dangle tag numbers D265 and D266 from Stephen Speers and failing to ensure a movement permit was available for the elk at time of movement and or reception” 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 #0708ON1001 dated October 25<sup>th</sup>, 2007;
- Letter dated December 7<sup>th</sup>, 2007, from the Applicant requesting a review;
- Letter dated January 2<sup>nd</sup>, 2008, from the Respondent enclosing its report.

The uncontested evidence of the Respondent, and in fact admitted by the Applicant, is that in June 2006, the Applicant purchased two female elk from Mr. and Mrs. Speers and transported them from the Speers' property to the Applicant's premises without first obtaining a transportation permit as required by the *Health of Animals Regulations*.

Dr. Dan Dewitt testified for the Respondent that the Applicant was well aware of the requirements to obtain a permit, had always co-operated in the past and had always been diligent in obtaining any necessary transportation permits.

Dr. Dewitt also acknowledged that the seller (host farm or farm of origin) normally obtains these transportation permits.

The Applicant testified that at the time of purchase he did not have the tag numbers for the elk. He said he was told by Mr. Speers that he would obtain the permit and took his word for it.

Subsequently, on checking his records, he found out that no such permit was obtained and in order to rectify his records, he requested the permit. He has not yet received it.

I am convinced from the forthright evidence provided by the Applicant that he acted at all times in good faith and certainly had no intention of breaching the *Regulations*, with which he was very familiar. In fact, the Respondent acknowledged that the failure to obtain the transportation permit was done without intent or negligence on the part of the Applicant, and that there was some confusion regarding the requesting and receiving of the required permits. For these reasons, the Respondent exercised its discretion in giving the Applicant the maximum reduction in penalty provided for in the *Regulations* (from \$4,000.00 to \$2,000.00).

Regrettably, the Applicant's lack of intent or negligence, and the Applicant's reliance upon Mr. Speers' assurance that he would obtain the required permit, are not defences to a 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 facts that, if true, would exonerate the person.

During the hearing I pointed out that a violation committed by an individual otherwise than in the course of business or that is not committed to obtain a financial benefit carries a reduced penalty in accordance with the *Regulations*.

However, in this case, although the Applicant testified he purchased the animals for his own use (for the viewing of persons who use his small campground), he did acknowledge that he was and still is in the elk business and that these animals are still production animals.

I am satisfied, whatever the intended use, that the elk in question were purchased and transported in the course of the Applicant's business, and therefore the Applicant does not meet the criteria for a further reduction in penalty as provided in the *Regulations*.

Although the Applicant, with some justification, considered the Respondent had "rubbed salt in his wounds", the Tribunal's mandate is restricted to determining whether or not a violation has been committed, and it has no authority over the manner in which the Respondent carries out its responsibilities.

Dated at Ottawa this 25<sup>th</sup> day of June, 2008.

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Thomas S. Barton, Q.C., Chairman