

**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*.

Mr. Mahmoud El-asmar, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following a review of the 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 to the Respondent of the penalty in the amount of \$200.00 within 30 days after the day on which this decision is served.

REASONS

The Applicant did not request an oral hearing.

The Notice of Violation dated November 20, 2000, alleges that the Applicant, at 17:30 hours on the 20th day of November, 2000, at Vancouver International Airport, 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.

In general, *Part IV* of the *Health of Animals Regulations* permits importation into Canada from the United States, of most of these items, if the country of origin is the United States. If the country of origin is other than the United States, there are various specific requirements for the importer to meet before importation of such items is allowed. In this case, it is clear from the evidence that the country of origin was Lebanon, and that the Applicant was unaware of the specific requirements of the *Regulations*.

The evidence submitted by the Applicant indicates that the Applicant was returning to Canada from his sister’s funeral in Lebanon and was still emotionally disturbed. He was not trying to hide anything, or to cheat anybody.

Although the Tribunal is sympathetic to the Applicant’s situation at the time, since there is no doubt the Applicant committed the violation, the Tribunal has no discretion other than to order payment of the penalty properly established in accordance with the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

The report of the Applicant further indicates that, on December 1, 2000, an Import Requirement query was made on the Respondent’s Automated Import Reference Computer System, showing that canned beef products from Lebanon for personal use are prohibited entry into Canada.

This evidence was not considered by the Tribunal as the query was conducted 11 days after the date of the alleged violation. Further, the Respondent's explanation of the automated import system is unclear as to whether the system includes the prescribed requirements of *Section 40* of the *Health of Animals Regulations*. Finally, there is no evidence that the results of the query on December 11, 2000, would be the same if a query had been taken on November 20, 2000, the date of the alleged Violation.

Dated at Ottawa this 11th day of January, 2001.

Thomas S. Barton, Q.C., Chairman