

***AGRICULTURE AND AGRI-FOOD ADMINISTRATIVE
MONETARY PENALTIES ACT***

DECISION

In the matter of an application for a review of the Minister's decision that the Applicant committed a violation pursuant to provision 34(1)(b) of the *Health of Animals Regulations*, and requested by the Applicant pursuant to paragraph 13(2)(b) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

Afzal Rahman, Applicant

- and -

Canada Border Services Agency, Respondent

MEMBER H. LAMED

Decision

Following an oral hearing and a review of the Minister's decision dated December 20th, 2006, and all submissions and information relating to the violation, the Tribunal, by order, confirms the Minister's decision and orders the Applicant to pay 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 a review of the Minister's decision in the form of an oral hearing pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations*.

The oral hearing was held in Montreal, Quebec, on May 30th, 2008.

The Applicant was not present at the hearing. I was apprised of the various unfruitful efforts by the Registrar of the Tribunal to serve the Notice of Hearing on the Applicant, as documented in the file, and of the fact that the Applicant had not informed the Office of the Registrar of changes to his address and phone number. Under these circumstances, I decided to hear the Respondent's presentation of the evidence contained in the file.

The Respondent was represented by Ms. Rosemary Copeland-Jones.

The Notice of Violation #017689 dated April 18th, 2005 alleges that the Applicant, on or about 17:30 on the 18th day of April, 2005, at Montreal, in the province of Quebec, committed a violation, namely: "Import an animal product, to wit: milk or milk products, without the prescribed requirements ", contrary to provision 34(1)(b) of the *Health of Animal Regulations*, which states as follows:

34. (1) No person shall import milk products into Canada from a country other than the United States or from a part of such a country, unless

(b) the person produces a certificate of origin signed by an official of the government of the country of origin that shows that the country of origin or part of such a country is the designated country or part thereof referred to in paragraph (a).

Pursuant to the Applicant's request for a review by the Minister, the Ministerial Decision maintaining the violation was issued on December 20, 2006.

The representative of the Respondent presented the evidence of the violation which formed the basis of the Minister's decision, at the oral hearing. The evidence established the identity of the Applicant, the fact that his Customs and Declaration card made no mention of any milk or milk products, and that following a sniffer dog's hit, the Applicant's luggage was found to contain Nestlé's Tea Whitener for which the Applicant had no certificate of origin.

In order to vary or set aside the Minister's decision, the Review Tribunal must find that the Minister committed a jurisdictional error or an error in law. For example, an application for a review may be allowed for the following reasons:

1. Powers are exercised in bad faith.
2. Powers are improperly delegated.
3. Powers are exercised without regard to natural justice or fairness.
4. Powers are exercised for improper purposes.
5. There is no evidence before the Minister to support the decision.
6. A decision is based upon irrelevant considerations.
7. An error is made in the interpretation of related or governing legislation, common law principles generally, or as the principles apply to the facts.
8. A decision is so unreasonable that any reasonable person in the Minister's position could not have made it.

The Tribunal finds the Minister's decision to have been reasonably made on the basis of the evidence and maintains the decision.

The Tribunal also wishes to point out to the Applicant that this is not a criminal or a federal offence but 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

(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), 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.

Dated at Ottawa this 18th day of September, 2008.

Member H. Lamed