

***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 49 of the *Plant Protection Act*, alleged by the Respondent, and requested by the Applicant pursuant to subsection 8(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

Glenlake Orchards Ltd., Applicant

-and-

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following a review of all submissions, the Tribunal, by order, determines the Applicant committed the violation.

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 Niagara Falls, Ontario, on September 23rd, 2008.

The Applicant was represented by Mr. Peter Buis.

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

After ascertaining both parties had copies of the following documents, they were entered on the record for the purpose of this hearing:

- Notice of Violation dated September 14th, 2007;
- Letter dated October 2nd, 2007, from the Applicant requesting a review;
- Letter dated October 17th, 2007, from the Respondent enclosing its case submissions;
- Letter dated November 1st, 2007, from the Applicant with further submissions.

The Notice of Violation #0708ON0205 dated September 14th, 2007, alleges that the Applicant, on the 6th day of September, 2007, at Niagara on the Lake, in the province of Ontario, committed a violation, namely: “DID fail to comply with a notice, to wit: Notice to Dispose 1004437”, contrary to provision 49 of the *Plant Protection Act*, which states:

49. Every person who fails to comply with a notice communicated to the person under section 6, 8, 24, 30 or 36 or the regulations is guilty of

(a) an offence punishable on summary conviction and liable to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months, or to both; or

(b) an indictable offence and liable to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both.

Section 2 of the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* provides that a contravention such as this is a violation that may be proceeded with in accordance with the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

The written evidence of the Respondent indicates that the Notice to Dispose of #1004437 was served on the Applicant on August 31st, 2007, after receipt of the Report of Analysis that one tree had tested positive for the plum pox virus.

The tree was not removed in accordance with the terms of the Notice.

Mr. Buis testified that he had no dispute with the evidence set out in the record and agreed that the removal order had not been complied with.

He did indicate the Respondent failed to exercise common sense in this situation as the Applicant was in the middle of harvest at the time, and that in the past, the Applicant had discussed the timing of removals with the Respondent to accommodate the interests of both parties. This was not done in this case.

The Applicant further indicated he was led to believe that the hearing before the Tribunal would be an opportunity to ask that the matter be resolved without the Applicant receiving a violation.

As the Tribunal has no such authority, I agreed I would postpone the Tribunal's decision for a period of three weeks in order to enable the Applicant to further discuss this file with the Respondent.

Mr. Wong agreed to provide the Applicant with the name of a contact in this regard.

Having not heard back from either party since the date of the hearing, I proceeded with my decision.

The Tribunal 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 20th day of October, 2008.

Thomas S. Barton, Q.C., Chairman