

**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*.

**Nikolai Khoutornoi, 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 of 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 did not request an oral hearing.

The Notice of Violation dated August 31, 2001, alleges that the Applicant, at 16:45 hours on the 31<sup>st</sup> day of August 2001, at Toronto in the province of Ontario, 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 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, and in this case the Respondent alleges the country of origin of the imported salami was Russia (which evidence was not rebutted by the Applicant), importation into Canada is only permitted if the importer meets one of the four prescribed requirements of *Part IV* of the *Health of Animals Regulations*, namely:

1. Under *subsection 41.(1)* if the country of origin has a disease- free designation and the importer produces a certificate signed by an official of the government of the country of origin that shows that the country of origin is the designated country referred to in the disease- free designation.

No such certificate was presented.

2. The importer meets the requirements of *subsection 52.(1)* which provides as follows:

*52.(1) Notwithstanding anything in this Part, a person may import an animal by-product if the person produces a document that shows the details of the treatment of the animal by-product and the inspector is satisfied, based on the source of the document, the information contained in the document and any other relevant information available to the inspector and, where necessary, on an inspection of the animal by-product, that the importation of the animal by-product into Canada would not, or would not be likely to, result in the introduction into Canada, or the spread within Canada, of a vector, disease or toxic substance.*

No such document was produced.

3. The importer has acquired an import permit pursuant to *subsection 52.(2)*.

No such permit was tendered.

4. In addition to meeting any one of the above requirements, the Respondent, itself, could have allowed the Applicant to import the animal by-product if a satisfactory inspection had been carried out under *paragraph 41.1(1)(a)* which states as follows:

41.1(1) Notwithstanding section 41, a person may import into Canada an animal by-product or a thing containing an animal by-product, other than a thing described in section 45, 46, 47, 47.1, 49, 50, 51, 51.2 or 53, if

(a) an inspector is satisfied on reasonable grounds that the animal by-product is processed in a manner which would prevent the introduction into Canada of any reportable disease or any other serious epizootic disease to which the species that produced the animal by-product is susceptible and which can be transmitted by the animal by-product, provided that the animal by-product or the thing containing the animal by-product is not intended or use as animal food or as an ingredient in animal food.

There is no evidence that an inspection of this nature took place.

The evidence of the Respondent is that, when asked, the Applicant acknowledged he did not have certificates or permits for the products being imported.

The Applicant contends that he did not buy the salami and did not put it in his bag. This does not alter the fact the Applicant imported the salami, and did not deny doing so.

The Applicant further alleges that the salami might not have contained meat, and alleges that the country or origin may not have been Russia. Although the Applicant raises interesting points, these observations are speculation and do not rebut the evidence of the Respondent that the salami was a meat product, and that it's country of origin was Russia.

The Tribunal finds the Respondent has established, on a balance of probabilities, that the Applicant committed the violation.

Dated at Ottawa this 1<sup>st</sup> of November, 2001.

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Thomas S. Barton, Q.C., Chairman