

***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 176 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*.

Denfield Livestock Sales Limited, 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 did not commit 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 London, Ontario, on September 24th, 2008.

The Applicant was represented by Mr. Bruce Coulter.

Evidence for the Applicant was given by Mr. Bruce Coulter and by his son, Mr. Brett Coulter.

The Respondent was represented by its solicitor, Ms. Louise Panet-Raymond.

Evidence for the Respondent was given by Dr. René Patenaude with the assistance of an interpreter, Ms. Marie-France Arismendi.

At the outset of the hearing, having ascertained each party had copies of the following documents, they were entered on the record as evidence for the purpose of the hearing:

- Notice of Violation dated June 14th, 2007;
- Letter dated July 14th, 2007, from the Applicant requesting a review;
- Letter dated July 19th, 2007, from the Respondent enclosing its case summary;
- Letter dated July 30th, 2007, from the Applicant with submissions in reply to the case summary;
- Letter dated August 9th, 2007, from counsel for the Respondent in reply to the Applicant's submissions;
- Letter dated August 15th, 2008, from the counsel for the Respondent regarding attendance of a witness;
- Letter dated August 20th, 2008, from the Applicant regarding attendance of a witness;
- Letter dated August 20th, 2008, from the Tribunal requesting attendance of a witness at the hearing.

After further discussion, the following letter was also entered on the record:

- Letter dated July 23rd, 2007, from the Tribunal to the Applicant regarding blacked-out information.

During the hearing, the following exhibits were received and entered on the record:

- Respondent's Exhibit #1 - 2 page Receipt of Animals document prepared by Levinoff-Colbex;
- Respondent's Exhibit #2 - 6 page decision of the Federal Court of Appeal in the case of *Canada (Canadian Food Inspection Agency) v. Magnowski*, 2003 FCA 492;
- Applicant's Exhibit #1 - 3 pages from Respondent's report showing a redacted case summary;
- Applicant's Exhibit #2 - sample of Applicant's identity sticker;
- Applicant's Exhibit #3 - a copy of magazine entitled "Limousin Voice", dated Spring 2008;
- Applicant's Exhibit #4 - 2 page invoice from Applicant to Levinoff-Colbex;

The Notice of Violation dated June 14th, 2007, alleges that the Applicant, on the 18 day of April, 2007, at Denfield, in the province of Ontario, committed a violation, namely: "No person shall move, or cause the movement of, an animal or the carcass of an animal from its farm of origin or from any other farm or ranch unless it bears an approved tag", contrary to provision 176 of the *Health of Animals Regulations*. Section 176 states as follows:

176. Subject to section 183, no person shall move, or cause the movement of, an animal or the carcass of an animal from its farm of origin or from any other farm or ranch unless it bears an approved tag issued under subsection 174(1) to the operator of the farm or ranch where the approved tag was applied to it.

Section 183 is not applicable in these circumstances.

I hereby amend the Notice of Violation to change the violation as being contrary to section 176 of the *Health of Animal Regulations* and not the *Health of Animals Act*.

I am satisfied that this was a clerical error which did not mislead the Applicant.

The three main issues raised in this hearing are whether the Applicant's auction facilities were the animal's farm of origin or other farm or ranch, whether the Applicant moved, or caused the movement of the animal from its auction facilities, and whether the animal that was not bearing an approved tag came from the Applicant's auction facilities.

Farm or ranch

Section 172 of the *Health of Animal Regulations* defines "farm or ranch" as including a feed lot, a breeding herd, an artificial insemination unit or any other place where an animal has been since leaving its farm of origin.

Accordingly, the Applicant's auction facilities are a "farm or ranch" for the purpose of section 176.

Causation

Assuming the untagged cow in question came from the Applicant's premises, the Respondent must establish, on a balance of probabilities, that the Applicant moved, or caused the movement of this untagged animal from its auction facilities.

The undisputed evidence is that on April 18th, 2007, Levinoff-Colbex, through its representative, Mr. Neil Woodrow, purchased 36 cows at the Applicant's auction.

Levinoff-Colbex then engaged the services of L. Bilodeau et Fils Ltée, to transport the cattle to its abattoir in St-Cyrille-de-Wendover, in Quebec.

There was no evidence from the Respondent as to who loaded the cattle at the Applicant's auction facilities.

On the other hand, Mr. Brett Coulter (testifying for the Applicant) agreed with his father that Neil Woodrow, the buyer for Levinoff-Colbex, "always" loads his own cows at the Denfield auction facilities and checks for tags as the cattle are going down the chute.

He also stated, in cross-examination, that Mr. Woodrow loaded the cows in question on April 18th, 2007, and subsequently gave further evidence that Mr. Woodrow "generally" loads all cattle purchased for Levinoff-Colbex at Denfield auctions.

He later testified that Denfield also loads cattle after its auction sales, and that he was not absolutely certain who loaded the cattle that day.

Despite this inconsistent evidence, I conclude that Mr. Neil Woodrow likely loaded the 36 cows in question for transport by L. Bilodeau et Fils Ltée to Levinoff-Colbex. The main issue however, is not the loading of the cattle but the movement of them from the Applicant's facilities.

The evidence is clear that L. Bilodeau et Fils Ltée moved the animals from the Applicant's facilities. The question remains as to whether the Applicant caused this movement of the animals.

Farmers bring or have delivered, their cattle to the Applicant's auction facilities and the cattle are sold by auction by the Applicant on behalf of the farmers to buyers such as Levinoff-Colbex.

The buyers take ownership of the cattle upon acquiring them at the sale, and are responsible for loading and removing their cattle from the Applicant's facilities.

On behalf of the farmers, the Applicant invoices the purchasers, who remit the sale proceeds to the Applicant, which then deducts standard commissions and expenses and remits the balance of the monies to the previous owners.

The Applicant's invoice (Applicant's Exhibit #4) contains the following conflicting statements: "we act as selling agents only" and "livestock remain property of Denfield Livestock until paid in full".

I am satisfied from the Coulters' evidence that the Applicant, in fact, does not take an ownership or proprietary interest in the cattle it sells at its auctions. It is an auctioneer.

The Coulters both testified the latter statement on the invoice is a security measure required by the FPP (Financial Protection Program established through provincial legislation and regulation to provide protection to cattle seller).

Mr. Brett Coulter stated the same wording is included on every bill from a stockyard in the event the buyer goes broke or cannot pay.

Further, there is no evidence that the Applicant exercises any degree of authority or control over the cattle once they have been sold at an auction.

I do not agree with the submission of counsel for the Respondent that by selling these cattle at its auction it has participated in the movement of those cattle from its facilities, and hence has committed the violation.

Having no ownership or proprietary interest in the cattle, and having no authority or control over the actions of the purchaser Levinoff-Colbex or its representative Mr. Neil Woodrow, or over the transporter L. Bilodeau et Fils Ltée, I find that the Applicant did not cause these cattle to be moved from its auction facilities.

This is consistent with similar findings of the Tribunal in the cases of *Maple Lodge Farms Ltd.*, RTA #60243, *Brian Whitta*, RTA #60254, and in *Volailles Grenville Inc.*, RTA #60277.

Consequently, it is not necessary to determine the issue as to whether the untagged cow was part of the load of 36 cows moved from the Applicant's facilities on April 18th, 2007.

Dated at Ottawa this 21st day of October, 2008.

Thomas S. Barton, Q.C., Chairman