

**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*.

**David W. Kor, Applicant**

**- and -**

**Canadian Food Inspection Agency, Respondent**

**CHAIRMAN BARTON**

**Decision**

**Following an oral hearing and 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 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 Vancouver on December 12, 2001.

The Applicant was unrepresented, and gave evidence on his own behalf.

The Respondent was represented by its solicitor, Ms. Vickie McCaffrey, and evidence on behalf of the Respondent was given by Mr. Andy Chan and Mr. Peter Dombovary.

The order of proceedings was agreed upon at the commencement of the hearing.

## NOTICE OF VIOLATION

The Notice of Violation dated July 8, 2001 alleges that the Applicant, at 15:30 hours on the 8<sup>th</sup> day of July 2001, at Vancouver International Airport, in the province of British Columbia, committed a violation, namely: “*import an animal by-product, to wit: meat, with 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 thing containing an animal by-product or manure except in accordance with this Part.*

The Notice of Violation contained a typographical error and should have read “*without meeting the prescribed requirements*”. This oversight does not invalidate the Notice of Violation.

The items in question, alleged to have been imported in contravention of the requirements, were a package of pork flossy manufactured in Thailand, and a jar from China alleged to contain ham.

There was no dispute as to the countries of origin of these items, and no dispute that the Applicant was the importer.

The sole issue was whether these items fell under the definition “*animal by-product*” under the *Health of Animals Act*, which reads as follows:

*“animal by -product” includes blood or any of its components, bones, bristles, feathers, flesh, hair, hides, hoofs, horns, offal, skins and wool, and any thing containing any of those things;*

## **JAR ALLEGEDLY CONTAINING HAM**

The report of the Respondent indicates the jar labelled in the Chinese language, and translated by Mr. Andy Chan, contained ham.

The Applicant gave evidence that there were two identical bottles in his suitcase at the time in question, although only one was seized. Mr. Kor, fluent in both Chinese and English, brought the allegedly unseized bottle (although now empty) to the hearing, and provided evidence that the labelling on this jar did not indicate it contained ham.

The Respondent’s witness, Mr. Andy Chan, acknowledged not being fluent in Chinese, but pointed out a difference between one of the Chinese characters on the picture of the jar in tab five of the report, and the label on the empty jar provided by Mr. Kor.

The Tribunal finds that the picture in tab five is not clear enough to determine whether there was a difference, and accepts the evidence of Mr. Kor that the labels on the jars indicate there is no ham product or animal product contained in the jars.

Had the seized jar been made available at the hearing, or if the picture in tab 5 had been clearer, this would not have been an issue at the hearing.

## **PORK FLOSSY**

The Applicant maintained that the flossy was only pork flavoured, and did not contain an animal by-product.

Both parties agreed that the three Chinese characters on the package of the pork floss translated into the words “*pig*”, “*meat*”, and “*floss*”. The Applicant stated that, taken together, these three words translate into “*pork flavoured floss*” while the Respondent said they mean “*pork floss*”.

The Respondent further pointed out the package labelled the item as “*crispy pork*” in English. Mr. Peter Dombovary gave evidence that a similar product is manufactured in Canada and in the United States and imported into Canada, and that he has dealt with the similar product on many occasions. Mr. Dombovary also stated that this is a dehydrated pork meat product, shredded finely and rendered down to very fine strands, and that it was definitely an animal by-product.

The Tribunal considers the evidence by the Respondent on this issue to be more compelling, and finds the Respondent has established, on a balance of probabilities, that the pork flossy is an animal by-product as defined in the *Health of Animals Act*, and that it was imported by the Applicant without meeting the prescribed requirements.

The Applicant, through his written submissions and evidence at the hearing, alleges he was unreasonably detained in the customs area of the airport for over three hours, during which time he was mistreated and humiliated. The Tribunal, although very sympathetic to the concerns of the Applicant, wishes to point out that its only jurisdiction is to determine whether or not a violation has been committed, and that the Tribunal has no jurisdiction over the alleged conduct of the customs officers.

Dated at Ottawa this 19<sup>th</sup> of December, 2001.

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Thomas S. Barton, Q.C., Chairman