

**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 34 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*.

Ms. Amelia Datuin, 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 did not commit the violation and is not liable for payment of the penalty.

REASONS

The Applicant did not request an oral hearing.

The Notice of Violation dated September 19, 2000, alleges that the Applicant, at 13:00 hours on the 19th day of September 2000 at Vancouver International Airport in the Province of B.C., committed a violation, namely, “*import an animal product to wit: milk or milk products without the required certificate*”, contrary to section 34 of the *Health of Animals Regulations* which states:

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

(a) the country or part of the country is designated as free of foot and mouth disease pursuant to section 7; and

(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).

The Custom's Declaration Card, form E311, being Tab #1 of the report of the Respondent indicates that the Applicant, along with Emelia Teodoro and James Roy Datuin, severally signed a written negative declaration concerning import of meat or other products of quarantine significance.

The report indicates that the possible prohibited material was detected in boxes. The report further indicates that the Applicant replied in response to a question from the Inspector that “*she did not have any food and indicated her mother packed it*”. Presumably this referred to the boxes.

The Applicant, in the Application for Review, stated her mother decided to bring some milk back with her from the Phillippines without the Applicant's knowledge.

The report of the Respondent does not identify who the boxes in question belonged to, and accordingly does not identify the Applicant as the importer.

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Section 19 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* requires

that the Respondent must establish, on a balance of probabilities, that the Applicant committed the violation identified in the notice.

Since the evidence discloses that the Applicant did not pack the boxes in question, was unaware of the presence of milk products in the boxes, and since there was no evidence to show who these boxes belonged to, the Respondent has failed to meet the burden proof.

Dated at Ottawa this 29th day of November, 2000.

Thomas S. Barton, Q.C., Chairman