

**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*.

Giuseppe Mangiardi, 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 Toronto on March 27, 2002.

The Applicant presented his own case.

The Respondent was represented by its solicitor, Ms. Cheryl A. Kerr.

The Notice of Violation dated August 15, 2001, alleges that the Applicant, on or about 22:50 hours on the 15th 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 animal by-products, if the country of origin is the United States. If the country of origin is other than the United States, importation into Canada is only permitted (except for certain specified products such as gluestock and bone meal, for which there are other specific requirements) if the importer meets one of the following 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 provided.

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

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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. The importer has presented the animal by-product for inspection and a satisfactory inspection has 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 4, 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 for use as animal food or as an ingredient in animal food.

No inspection of this nature took place.

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The following facts are not in dispute:

1. That sausages and meat sandwiches were found in the Applicant's luggage.
2. That the Applicant was unaware that these items were in his luggage.
3. That the Applicant's father packed the sausages, and the Applicant's sister packed the meat sandwiches.
4. That the country of origin of the sausages and meat sandwiches was Italy.

As was explained to the Applicant at the hearing, the Applicant's lack of knowledge of the contents of his luggage is not a defence to the violation by reason of *subsection 18(1)* of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, which states as follows:

18.(1) A person named in a notice of violation does not have a defence by reason that the person

(a) exercised due diligence to prevent the violation; or

(b) reasonably and honestly believed in the existence of the facts that, if true, would exonerate the person.

Accordingly, it is clear from the undisputed evidence that the Applicant committed the violation.

Dated at Ottawa this 3rd of April, 2002.

Thomas S. Barton, Q.C., Chairman