

**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 39 of the *Plant Protection 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*.

Mike Hamdan, Applicant

- and -

Canadian Food Inspection Agency, Respondent

CHAIRMAN BARTON

Decision

Following a review of the written 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 July 14, 2003, alleges that the Applicant, on or about 16:00 hours on the 14th day of July 2003, at Calgary, in the province of Alberta, committed a violation, namely: “fail to declare fruit as prescribed” contrary to section 39 of the *Plant Protection Regulations*, which states:

39. Every person shall, at the time of importation into Canada of any thing that is a pest, is or could be infested or constitutes or could constitute a biological obstacle to the control of a pest, declare that thing to an inspector or customs officer at a place of entry set out in subsection 40(1).

Section 2 of the *Plant Protection Act*, under which the *Regulations* were passed, states:

2. The purpose of this Act is to protect plant life and the agricultural and forestry sectors of the Canadian economy by preventing the importation, exportation and spread of pests and by controlling or eradicating pests in Canada”.

Section 3 of the *Plant Protection Act* contains the following pertinent definition:

“pest” means anything that is injurious or potentially injurious, whether directly or indirectly, to plants or to products or by-products of plants, and includes any plant prescribed as a pest.

The Applicant admitted importing green almonds, but stated he did not know it was necessary to declare these items with Customs.

The uncontradicted evidence of the Respondent is that the Applicant imported five pounds of green almonds from Lebanon which were found inside the Applicant’s luggage. Although the Applicant did declare he was importing “food” on the Custom’s declaration form E-311, when asked by the Customs officer if he was bringing back any other fruits, vegetables or plant products, he replied that coffee was the only food item he was bringing into Canada.

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For the purpose of Section 39 of the *Regulations*, the Respondent has clearly established

the Applicant did not declare the five pounds of fruit to an inspector or a Customs officer at the place of entry.

However, it is equally clear there is absolutely no evidence the fruit was a pest, was or could be infested or constituted or could constitute a biological obstacle to the control of a pest.

Having failed to produce any evidence on this essential element of the violation, the Respondent has not established, on a balance of probabilities, that the Applicant committed the violation.

Dated at Ottawa this 23rd day of September, 2003.

Thomas S. Barton, Q.C., Chairman