

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) A.Q. Docket No. 05-0002
)
Dario Cortez)
)
Respondent) DECISION and ORDER
)
)

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the requirements for the importation of birds from Mexico into the United States (9 C.F.R. ' 93.100 et seq.) hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. ' ' 1.130 et seq. and 9 C.F.R. ' ' 99.1 et seq.

This proceeding was instituted under the Act of February 2, 1903, amended, (21 U.S.C. ' 111)(Act), by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service (APHIS) on October 29, 2004, alleging that respondent Dario Cortez violated the Act and regulations promulgated under the Act (9 C.F.R. ' 93.100 et seq.).

The complaint sought civil penalties as authorized by section 3 of the Act (21 U.S.C. ' 122). This complaint specifically alleged that on or about December 15, 2000 respondent imported, failed to apply for an import permit for, failed to provide a

Mexican government veterinary certificate for, and failed to provide for inspection by a port veterinarian at the Customs port of entry for twenty-five (25) Yellow Cheeked Amazon parrots at the Otay Mesa Border Crossing .

The respondent failed to file an answer within the time prescribed in 7 C.F.R. ' 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. ' 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. ' 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing. (7 C.F.R. ' 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. ' 1.139).

Findings of Fact

1. Dario Cortez, respondent herein, is an individual with a mailing address of 921 Perrisito Street, Perris, California 92570.
2. On or about December 15, 2000, the respondent failed to apply for an import permit for approximately twenty-five (25) Yellow Cheeked Amazon Parrots that the respondent imported from Mexico into the United States at Otay Mesa Border Crossing, in violation of 9 C.F.R. ' 93.103(a).
3. On or about December 15, 2000, the respondent failed to provide a certificate issued by a veterinary officer of the national government of the exporting region, herein Mexico, for approximately twenty-five (25) Yellow

Cheeked Amazon Parrots that the respondent imported from Mexico into the United States at Otay Mesa Border Crossing, in violation of 9 C.F.R. ' 93.104(a).

4. On or about December 15, 2000, the respondent failed to have approximately twenty-five (25) Yellow Cheeked Amazon Parrots that the respondent imported from Mexico into the United States at Otay Mesa Border Crossing inspected by the port veterinarian at the Customs port of entry, in violation of 9 C.F.R. ' 93.105.

Conclusion

By reason of the Findings of Fact set forth above, the respondent(s) has committed three (3) violations of the Act and the regulations issued under the Act (9 C.F.R. ' 93.100 et seq). Therefore, the following Order is issued.

Order

Respondent Dario Cortez is assessed a civil penalty of three thousand dollars (\$3,000). This civil penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondents shall indicate on the certified check or money order that payment is in reference to A.Q. Docket No. 05-0002.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. ' 1.145 of the Rules of Practice.

Done at Washington, D.C.

this 8th day of March, 2005

Marc R. Hillson
Administrative Law Judge