

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

P.Q. Docket No. 04-0009

In re:

Alliance Airlines

Respondent

DECISION AND ORDER

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the notice and inspection requirements of the importation of certain types of restricted fruits and peppers from Jamaica into the United States (7 C.F.R. § 319.56 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 380.1 et seq.

This proceeding was instituted under the Plant Protection Act (7 U.S.C. §§ 7701-7772)(Act), by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service (APHIS) on May 11, 2004, alleging that Alliance Airlines violated the Act and regulations promulgated under the Acts (7 C.F.R. § 319.56 et seq.).

The complaint sought civil penalties as authorized by section 424 of the Plant Protection Act (7 U.S.C. § 7734). This complaint specifically alleged that on or about March 25, 2001

Respondent imported, failed to provide advance notice of, and failed to assemble for inspection boxes of restricted callaloo and peppers.

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. Alliance Airlines, respondent herein, is a business whose mailing address is 1950 NW 66th Avenue, Bldg. 708, Suite 226, Miami, FL 33126.
2. On or about March 25, 2001, Respondent imported approximately one hundred and nineteen (119) boxes of restricted Callaloo and eighteen (18) boxes of restricted peppers from Jamaica into the United States at Miami, Florida and failed to provide advance notice of their arrival to APHIS, in violation of 7 C.F.R. § 319.56-5(a).
3. On or about March 25, 2001, Respondent, at Miami, Florida, failed to assemble for inspection approximately one hundred and nineteen (119) boxes of restricted Callaloo and eighteen (18) boxes of restricted peppers from Jamaica in their notice of arrival, in violation of 7 C.F.R. § 319.56-6(b).

Conclusion

By reason of the Findings of Fact set forth above, Respondent has violated the Act and the regulations issued under the Act (7 C.F.R. § 319.56 et seq). Therefore, the following Order is issued.

Order

Respondent Alliance Airlines is assessed a civil penalty of twenty thousand dollars (\$20,000). 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 P.Q. Docket No. 04-0009.

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.
May 2, 2005

Peter M. Davenport
PETER M. DAVENPORT
Administrative Law Judge