

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P.Q. Docket No. 05-0024
)
Wendy Miller,)
)
Respondent) DECISION and ORDER
)
)

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the prohibition of the importation of avocados and fresh fruit from Hawaii into the continental United States (7 C.F.R. § 318.13 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 Acting Administrator of the Animal and Plant Health Inspection Service on May 27, 2005, alleging that the respondent 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).

The complaint alleged that the respondent illegally shipped approximately one pound of fresh avocados and one half of a pound of fresh passion fruit for shipment from Hawaii to the continental United States.

The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). In fact, the respondent has not filed any answer. 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. Wendy Miller, hereinafter referred to as the respondent, is an individual whose mailing address is 5111 Hanawai Street, Apt. F, Lahaina, Hawaii 96761-1144.

2. On or about January 11, 2001, at Haiku, Hawaii, the respondent offered to a common carrier, specifically the U.S. Postal Service, approximately one pound of fresh avocados and one

half of a pound of fresh passion fruit for shipment from Hawaii to the continental United States, in violation of 7 C.F.R. §§ 318.13(b) and 318.13-2(a)(1), because movement of these items into or through the continental United States is prohibited.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Act and the regulations issued under the Act (7 C.F.R. §§ 318.13 et seq.). Therefore, the following Order is issued.

Order

The respondent, Wendy Miller, is assessed a civil penalty of five hundred dollars (\$500.00). The respondent shall pay five hundred dollars (\$500.00) as a civil penalty. 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

Respondent shall indicate on the certified check or money order that payment is in reference to P.Q. Docket No. 05-0024

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 11th day of May, 2006

Marc R. Hillson
Administrative Law Judge