

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P.Q. Docket No.
	)	
Esmeralda T.R. Shelltrack,	)	05 - 0012
	)	
Respondent	)	
	)	DECISION and ORDER
	)	
	)	

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the movement of fruits from Hawaii into the Continental United States (7 C.F.R. " 318.13 et seq. and 330.200) hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. " 1.130 et seq. and 7 C.F.R. " 380.1 et seq..

This proceeding was instituted under the Plant Protection Act (7 U.S.C. " 7701 et seq.)(Act), by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service (APHIS) on January 7, 2005, alleging that respondent Esmeralda T.R. Shelltrack violated the Act and regulations promulgated under the Acts (7 C.F.R. " 318.13 et seq. and 330.200).

The complaint sought civil penalties as authorized by 7 U.S.C. ' 7734. This complaint specifically alleged that on or about July 28, 2003, the respondent knowingly attempted to move interstate from Hawaii to North Dakota approximately twenty (20) marungai pods, weighing approximately 2.2 pounds, which were infested with *Diaspididae Homoptera*, a plant pest, in

violation of 7 C.F.R. ' 330.200; and that on or about July 28, 2003, at Waianae, Hawaii, the respondent offered to a common carrier, specifically the U.S. Postal Service, approximately twenty (20) marungai pods, weighing approximately 2.2 pounds, for shipment from Hawaii to the continental United States, in violation of 7 C.F.R. " 318.13(b) and 318.13-2(a).

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. Esmeralda T.R. Shelltrack, hereinafter referred to as respondent, is an individual with a mailing address of P.O. Box 1216, Waianae, Hawaii 96792.

2. On or about July 28, 2003, the respondent knowingly attempted to move interstate from Hawaii to North Dakota approximately twenty (20) marungai pods, weighing approximately 2.2 pounds, which were infested with *Diaspididae Homoptera*, a plant pest, in violation of 7 C.F.R. ' 330.200

3. On or about July 28, 2003, at Waianae, Hawaii, the respondent offered to a common carrier, specifically the U.S. Postal Service, approximately twenty (20) marungai pods, weighing approximately 2.2 pounds, for shipment from Hawaii to the continental United States, in violation of 7 C.F.R. " 318.13(b) and 318.13-2(a).

#### 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 and 330.200). Therefore, the following Order is issued.

#### Order

Respondent Esmeralda T.R. Shelltrack is assessed a civil penalty of five hundred dollars (\$500). 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. 05-0012.

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 1<sup>st</sup> day of July, 2005

Peter M. Davenport  
Administrative Law Judge