

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) A.Q. Docket No. 05-0010
)
Bret James Minkler,)
)
Respondent)
) Default 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 pork (9 C.F.R. §§ 94 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 Act of February 2, 1903, as amended, (21 U.S.C. § 111) and the regulations promulgated thereunder (9 C.F.R. §§ 94 et seq.), by a complaint filed on June 28, 2005, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The complaint was sent to Respondent at 32400 Parcel Avenue, Yacolt, WA 98675 via certified mail, return receipt requested on September 16, 2005, and was returned to the Hearing Clerk’s office marked “unclaimed” on October 11, 2005. Pursuant to Rule 1.147(c)(1) the complaint was then sent to Respondent via regular mail on October 12, 2005. The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a).

On September 19, 2006, Complainant filed a Motion for Adoption of Proposed Default Decision and Order. Respondent opposed this Motion, contending that he had not received the complaint. However, failure to claim a complaint properly sent by certified mail, and subsequent service by regular mail, both of which are clearly documented in the file, are sufficient to trigger the requirement that an answer be filed within twenty days. 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 admission of the allegations in the complaint 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. Bret James Minkler, hereinafter referred to as Respondent, is an individual with a mailing address of 32400 Parcel Ave., Yacolt, WA 98675.

2. On or about October 23, 2001, the respondent violated 9 C.F.R. § 94.11 of the regulations by importing into the United States from Sweden approximately ten packages of sliced ham without the required health certification prescribed in 9 C.F.R. § 94.4(a)(4) or without a Department approved meat inspection certificate prescribed in 9 C.F.R. § 327.4.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Act of February 2, 1903, as amended, and the regulations issued under the Act. Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of five hundred dollars (\$500.00). This 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 that payment is in reference to:

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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 section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

Done at Washington, D.C.
this 8th day of January, 2007.

Marc R. Hillson
Chief Administrative Law Judge