

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

P.Q. Docket No. 08-0078

In re: YASMIN SEVELO,
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 fruits and plant pests from Hawaii into the continental United States by post (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 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 March 12, 2008, alleging that respondent Yasmin Sevelo violated the Act and regulations promulgated under the Acts (7 C.F.R. §§ 318.13 et seq.).

The complaint sought civil penalties as authorized by 7 U.S.C. § 7734. This complaint specifically alleged that on or about January 8, 2004, respondent attempted to ship by USPS from Hawaii to the Continental United States approximately 4.5 pounds of fresh herbs and 0.6 pounds of ti leaves, in violation of 7 C.F.R. §§ 318.13(b) and 318.13-2(a).

On March 17, 2008, respondent or her agent signed for the complaint filed five days earlier. Accordingly, pursuant to the Rules of Practice, an answer was due within twenty days

of receipt of the complaint. On April 8, 2008, the USDA, Office of Administrative Law Judges, Hearing Clerk's Office sent a letter to respondent informing her that an answer to the complaint had not been received within the allotted time. On October 8, 2008, that same office sent a letter to both respondent and complainant to inform them that there had been no activity for six months in this case.¹ Accordingly, 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. Yasmin Sevelo, hereinafter referred to as respondent, is an individual with a mailing address of 46-2101 Haiku Road, Kaneohe, Hawaii 96744.
2. On January 8, 2004, at Kaneohe, Hawaii, the respondent offered to a common carrier, specifically the U.S. Postal Service, 4.5 pounds of fresh herbs and 0.6 pounds of ti leaves for shipment from Hawaii into the continental United States, in violation of 7 C.F.R. §§ 318.13(b) and 318.13-2(a).

Conclusions of Law

¹ This notice mistakenly described the case number as "AQ-08-0074"

1. The Secretary has jurisdiction in this matter.
2. 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

Respondent Yasmin Sevelo 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

Respondents shall indicate on the certified check or money order that payment is in reference to P.Q. Docket No. 08-0078.

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.

Copies of this Default Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

Done at Washington, D.C.
December 2, 2008

PETER M. DAVENPORT
Administrative Law Judge