

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

P.Q. Docket No. 08-0084

In re: S.F. B. FARMS, INC.
d/b/a R & E FLORAL EXPRESS, INC.,

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 importation of cut flowers into the United States (7 C.F.R. §§ 319.74 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 20, 2008, alleging that respondent S.F.B. Farms, Inc., d/b/a R & E Floral Express violated the Act and regulations promulgated under the Acts (7 C.F.R. §§ 319.74 et seq.).

The complaint sought civil penalties as authorized by 7 U.S.C. § 7734. This complaint specifically alleged that on or about October 25, 2004, respondent imported into the United States seven bundles of flowers, weighing approximately seventy-four kilograms, DHL Airway Bill # 992-0401-5841, which were found to be infested with injurious plant pests. An Emergency Action Notification, APHIS PPQ Form 523 was issued to respondent, informing respondent that it had 24 (twenty-four) hours to destroy the cut flowers, ship them to a point outside the United

States, move them to an authorized site, and/or apply treatments, clean, or apply other safeguards to the cut flowers as prescribed in Form 523, and that respondent did not, within the twenty-fours prescribed in Form 523, perform any of the remedial measures listed on Form 523, in violation of 7 C.F.R. § 319.74-2(b).

On March 20, 2008, the Hearing Clerk's Office mailed a copy of the complaint to respondent by certified mail. On April 22, 2008, this letter was returned to the Hearing Clerk's Office marked "unclaimed." Pursuant to section 1.147(c)(1) of the Rules of Practice applicable to this proceeding, the complaint was resent by ordinary mail to the respondent on that date, and was thereby deemed to have been received by the Respondent on April 22, 2008.

Pursuant to section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), Respondent was informed in the complaint and the letter accompanying the complaint that an answer should be filed with the Hearing Clerk within twenty (20) days after service of the complaint, and that failure to file an answer within twenty (20) days after service of the complaint constitutes an admission of the allegations in the complaint and waiver of a hearing.

Respondent's answer was due no later than twenty days after service of the complaint (7 C.F.R. § 1.136(a)). Accordingly, Respondent had until May 12, 2008, to file an answer to the complaint. 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. S.F.B. Farms, Inc., hereinafter referred to as Respondent, is a business, incorporated under the laws of the State of Florida, with a mailing address of P.O. Box 522324, Miami, FL, 33152, and that at all times material herein did business under the name of R & E Floral Express, Inc..

2. Respondent's principal place of business is located at 7371 NW 35th Street, Miami, FL, 33122.

3. On or about October 15, 2004, at Miami International Airport, Florida, the Respondent imported into the United States seven bundles of flowers, weighing approximately seventy-four kilograms, DHL Airway Bill # 992-0401-5841, which were found to be infested with injurious plant pests. An Emergency Action Notification, APHIS PPQ Form 523 was issued to Respondent, informing Respondent that it had 24 (twenty-four) hours to destroy the cut flowers, ship them to a point outside the United States, move them to an authorized site, and/or apply treatments, clean, or apply other safeguards to the cut flowers as prescribed in Form 523. Respondent did not, within the twenty-fours prescribed in Form 523, perform any of the remedial measures listed on Form 523, in violation of 7 C.F.R. § 319.74-2(b).

Conclusions of Law

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. §§ 319.74 et seq).

Order

Respondent S.F.B. Farms, Inc., d/b/a R & E Floral Express, Inc. is assessed a civil penalty of fifteen thousand dollars (\$15,000). 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

Respondent shall indicate on the certified check or money order that payment is in reference to P.Q. Docket No. 08-0084.

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.
March 3, 2009

PETER M. DAVENPORT
Administrative Law Judge