

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) P.Q. Docket No. 07-0117
)
) Wayne Tang, dba)
) Bingo Toys and Gifts,)
)
) 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 nursery stock, soil, and endangered plant species (7 C.F.R. §§ 319.37 et seq., 7 C.F.R. §§ 330.300, 7 C.F.R. §§ 355.11 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.), and the regulations promulgated thereunder, by a complaint filed on May 18, 2007, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. 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 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. Wayne Tang, dba Bingo Toys and Gifts, hereinafter referred to as Respondent, has a mailing address of 2572 Amaryl Court, San Jose, California 95132-2635.
2. On or about May 29, 2002, the Respondent imported 97 *Nolina* sp. plants into the United States from China without a phytosanitary certificate in violation of 7 C.F.R. § 319.37-4 and without a permit in violation of 7 C.F.R. § 319.37-3(5).
3. On or about May 29, 2002, the Respondent imported 198 *Cycas* sp. plants into the United States from China without a general permit from Plant Protection and Quarantine (“PPQ”) in violation of 7 C.F.R. § 355.11. *Cycas* sp. plants are listed in the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (50 C.F.R. § 23.23) and therefore no person may engage in business as an importer of these plants unless such person has obtained a general permit from PPQ. 7 C.F.R. § 355.11. Furthermore, the package did not plainly or correctly bear information identifying the plants in violation of 7 C.F.R. § 355.20(a).
4. On or about May 29, 2002, the Respondent imported restricted articles from China that were not free of sand, soil, earth, or other growing media in violation of 7 C.F.R. § 319.37-8(a) and 7 C.F.R. § 330.300.

Conclusion

By reason of the Findings of Fact set forth above, the Respondent has violated the Plant Protection Act (7 U.S.C. §§ 7701 et seq.), and the regulations issued under the Act. Therefore, the following Order is issued.

Order

The Respondent is hereby assessed a civil penalty of twenty-six thousand dollars (\$26,000.00). 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: P.Q. Docket No. 07-0117.

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 ____ day of _____, 2007.

Administrative Law Judge