

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 10-0108

In re: Melex Custom House Broker, Inc.,

Respondent

Default Decision and Order

Preliminary Statement

This is an administrative proceeding for the assessment of a civil penalty for a violation of the Plant Protection Act (7 U.S.C. §§ 7701 et seq.) 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. The 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 February 4, 2010 and amended on June 9, 2010, 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 failure to answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. The Complainant has filed a Motion for Adoption of Proposed Decision and Order. The Motion will be granted and the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to Section 1.139 of the Rules of Practice applicable to this proceeding. 7 C.F.R. § 1.139.

Findings of Fact

1. Melex Customhouse Brokers, Inc., hereinafter referred to as Respondent, is a company with a mailing address in Miami, Florida.
2. On or about July 11, 2005, the Respondent violated Section 412 (a) of the PPA (7 U.S.C. § 7712 (a)) and Sections 330 and 352 of the Code of Federal Regulations (7 C.F.R. §§ 330.110, 352.10(b)) when it transported cut flowers imported from Colombia from Miami International Airport to the USDA fumigation area several miles away without first sealing the vehicle used to transport the flowers.
3. On or about October 27, 2007, the Respondent violated Section 412(a) of the PPA (7 U.S.C. § 7712 (a)) and Sections 319 and 330 of the Code of Federal Regulations (7 C.F.R. §§ 319.56-3 and 330.106) when it imported a one-piece combo (670 pieces of mini-pineapple fruit) without applying for or presenting a permit and when it subsequently failed to comply with remedial measures outlined in the Emergency Action Notification (EAN). The EAN was issued to the respondent on October 27, 2007.
4. On or about November 16, 2007, the Respondent violated Section 412(a) of the PPA (7 U.S.C. § 7712 (a)) and Sections 319 and 330 of the Code of Federal Regulations (7 C.F.R. §§ 319.74-2 and 330.106) when it failed to comply with remedial measures to re-export imported cut flowers (55 pieces of Chrysanthemums and 9 pieces of Hydrangea) infested with possible actionable pests, Molluska (snails) and Lepidoptera (butterflies).

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 Plant Protection Act (7 U.S.C. §§ 7701 et seq.).

Order

1. The Respondent is hereby assessed a civil penalty of twenty thousand dollars (\$20,000.00). 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
U.S. BANK
P.O. Box 979043
St. Louis, MO 63197-9000

Respondent shall indicate that payment is in reference to: P.Q. Docket No. 10-0108.

2. 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.

Copies of the Decision and Order shall be served on the parties by the Hearing Clerk.

March 10, 2011

PETER M. DAVENPORT
Chief Administrative Law Judge