

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P.Q. Docket No. 03-0015
	)	
St. Johns Shipping Company, Inc.,	)	
and Bobby L. Shields a.k.a. Lebron	)	
Shields a.k.a. L. Shields a.k.a. Bobby	)	
Lebron Shields a.k.a. Cooter Shields	)	
d/b/a Bahamas RO RO Services, Inc.,	)	
	)	
Respondents.	)	
	)	<b>Default Decision and Order</b>

This is an administrative proceeding for the assessment of a civil penalty for a violation of the Plant Protection Act of June 20, 2000, as amended (7 U.S.C. §§ 7701 et seq.) (the Act), 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 by a complaint filed on September 23, 2003, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture and served by certified mail on respondent Bobby L. Shields a.k.a. Lebron Shields a.k.a. L. Shields a.k.a. Bobby Lebron Shields a.k.a. Cooter Shields d/b/a Bahamas RO RO Services, Inc. (hereinafter “Shields”) on October 23, 2003. Pursuant to section 1.136 of the Rules of Practice (7 C.F.R. 1.136), respondent Shields 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. Shields’ answer thus was due no later than November 12, 2003, twenty days after service of the complaint (7 C.F.R. 136(a)).

On October 23, 2003, Shields filed a letter requesting that his time to submit an answer to the complaint be extended to November 14, 2003. I issued an order granting the extension of time to answer on October 30, 2003. On November 19, 2003, the Hearing Clerk received a letter dated November 10, 2003 and postmarked November 12. Although that letter was addressed to me, rather than the Hearing Clerk, and was apparently delayed in its trip to USDA in Washington, D.C. by being irradiated at an outside location, I conclude that this letter was timely filed. The letter, which I am construing to be Shields' answer, did not deny or fully address the allegations listed in the complaint.

Arguing that Shields either failed to file an answer within the time prescribed in 7 C.F.R. 1.136(a) or failed to deny or otherwise respond to an allegation of the complaint, complainant on February 26, 2004 filed a Motion for Proposed Adoption of Default Decision and Order. 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) or to deny or otherwise respond to an allegation of the complaint shall be deemed an admission of the allegations in the complaint. While I rule that the answer was timely filed, Shield failure to address the specific allegations of the complaint are deemed an admission pursuant to the Rules of Practice. 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).

Complainant filed a Motion for Adoption of Proposed Default Decision with respect to Shields on February 6, 2004. Although Shields received a copy of this Motion on March 1, 2004, no response was ever filed.

Although the Proposed Default Decision would have me assess a \$15,000 civil penalty against Shields, I am assessing a penalty of only \$1,000. The statute on its face limits the penalty that can be assessed against an individual who violates its provisions to \$1,000 “in the case of an initial violation of this chapter by an individual moving regulated articles not for monetary gain.” 7 U.S.C. § 7734(b)(1)(A). There is no allegation in the Complaint or in the Motion that Respondent has a previous violation or that he was moving regulated articles for monetary gain. Further, the statute specifies that the Secretary must “take into account the nature, circumstance, extent and gravity of the violation.” *Id.*, at (b)(2).

Even in the case of a default decision, the Secretary or her designee must at least address the statutory requirements concerning penalty assessment. While the Rules of Practice state that failure to file an Answer “shall be deemed . . . an admission of the allegation in the Complaint,” Rule 1.136(c), no allegations made in the Complaint support the requested penalty. Under the minimal facts alleged here, I see no basis to assess a penalty greater than \$1,000.

#### Findings of Fact

1. Respondent Bobby Lebron Shields d/b/a Bahamas RO RO Services is a cargo agent operating a freight forwarding business incorporated in Florida with a mailing address of 437 N.E. Bayberry Lane, Jensen Beach, Florida 34957.

2. On or about September 1, 2001, respondent Bobby Lebron Shields d/b/a Bahamas RO RO Services violated section 413(c) of the Act (7 U.S.C. § 7713(c)) by moving from a port of entry cargo from the Bahamas manifested as “toys and crafts” (container no. 2929862, bill of lading no. 1), without inspection by, and authorization for entry into or transit through the United

States from, the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine. Section 413(c) of the Act prohibits any person from moving any imported plant or plant product, plant pest, noxious weed, or article from a port of entry unless the imported plant or plant product, plant pest, noxious weed, or article is inspected and authorized for entry into or transit through the United States by the U.S. Department of Agriculture.

### Conclusion

By reason of the Findings of Fact set forth above, respondent Bobby Lebron Shields d/b/a Bahamas RO RO Services has violated the Act and the regulations issued under the Act. Therefore, the following Order is issued.

### Order

Respondent Bobby Lebron Shields d/b/a Bahamas RO RO Services is hereby assessed a civil penalty of one thousand dollars (\$1,000.00). 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 Shields shall indicate that payment is in reference to P.Q. Docket No. 03-0015.

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 Shields 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 21<sup>st</sup> day of December, 2004.

/s/

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**Marc R. Hillson**  
Chief Administrative Law Judge