

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P.Q. Docket No. 02-0006
)
Toilea Nivila, and/or Toilea Jr.,)
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)
Respondent) DECISION and ORDER
)

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the prohibition of the movement or importation of certain types of fruit from Hawaii into the continental United States (7 C.F.R. §§ 318.13(b) and 318.13-2(a)) hereinafter referred to as the regulations, 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 Plant Protection Act (7 U.S.C. §§ 7701-7772)(Act), by a complaint filed by the Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, on March 11, 2002.

The complaint alleged that respondent(s) Toilea Nivila, and/or Toilea Jr. violated the Act and regulations promulgated under the Act (7 C.F.R. §§ 318.13(b) and 318.13-2(a)) by illegally offering for shipment and/or moving mangoes from Hawaii into the continental United States.

This complaint sought civil penalties as authorized by section 424 of the Plant Protection Act (7 U.S.C. § 7734).

This complaint specifically alleged that on or about July 10, 2000, the respondent(s),

at the Honolulu International Airport, Honolulu, Hawaii, offered to a common carrier, specifically Federal Express, approximately twenty-two (22) pounds of fresh mangoes for shipment from Hawaii to the continental United States, in violation of 7 C.F.R. §§ 318.13(b) and 318.13-2(a), because such offer for shipment or movement of such fruit from Hawaii into or through the continental United States is prohibited.

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. Toilea Nivila, and/or Toilea, Jr., hereinafter referred to as the respondent(s), is an individual(s) whose mailing address is P.O. Box 251, Kihei, Hawaii 96753.

2. On or about July 10, 2000, at the Honolulu International Airport, Honolulu, Hawaii, the respondent(s) offered to a common carrier, specifically Federal Express, approximately twenty-two (22) pounds of fresh mangoes for shipment from Hawaii to the continental United States, in violation of 7 C.F.R. §§ 318.13(b) and 318.13-2(a), because such offer for shipment or movement of such fruit from Hawaii into or through the continental United States is prohibited.

Conclusion

By reason of the Findings of Fact set forth above, the respondent(s) has violated the Act and the regulations issued under the Act (7 C.F.R. § 319.56 et seq). Therefore, the following Order is issued.

Order

Respondent(s), Toilea Nivila, and/or Toilea, Jr., is hereby assessed a civil penalty of seven hundred and fifty dollars (\$750.00). 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 on the certified check or money order that payment is in reference to P.Q. Docket No. 02-0006.

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. this

3rd day of May, 2004

Marc Hillson
Administrative Law Judge