

USE  
C-110-05  
11/19/24

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:

"R" Best Produce, Inc.

Respondent

P.Q. Docket No. 05-0002

CONSENT DECISION

This proceeding was instituted under the Plant Protection Act (7 U.S.C. §§ 7701 et seq.)(Act), by a complaint filed on October 7, 2004, by the acting Administrator of the Animal and Plant Health Inspection Service, and by an amended complaint filed on April 14, 2005, alleging that the respondent violated the Act and regulations promulgated under the Act (7 C.F.R. §§ 319.56 et seq. and §§ 319.37 et seq.). The complainant and the respondent have agreed that this proceeding should be terminated by entry of this Consent Decision.

For the purposes of this Consent Decision only, respondent specifically admits that the Secretary of the United States Department of Agriculture has jurisdiction in this matter, neither admits nor denies the remaining allegations in the complaint, and admit to the Findings of Fact set forth below.

Respondent waives:

- (a) Any further procedure;
- (b) Any requirement that the final decision in this proceeding contain findings and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or bases thereof;
- (c) All rights to seek judicial review and otherwise challenge or contest the validity of this decision; and
- (d) Any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 et seq.) for fees and other expenses incurred by the respondent in connection with this proceeding.

Findings of Fact

1. "R" Best Produce, Inc., hereinafter referred to as the respondent, is a business whose mailing address is 220 Food Centre Drive, Bronx, New York 10474.

2. On or about January 14, 2001, the respondent imported approximately eight hundred (800) boxes (approx. 32,000 kg) of unmanifested fresh yams (B/L # DOLQ MOI000023ILG, Container # DFIU4100573 - manifested as a shipment of 1097 bags of pumpkins) from Costa Rica into the United States at Port of Wilmington, Delaware, without a permit.

3. On or about January 14, 2001, the respondent imported approximately eight hundred (800) boxes of unmanifested fresh yams (B/L # DOLQ MOI000023ILG, Container # DFIU4100573 - manifested as a shipment of 1097 bags of pumpkins) from Costa Rica into the United States at Port of Wilmington, Delaware, and did not apply for a permit to import the yams.

4. On or about January 14, 2001, the respondent imported approximately eight hundred (800) boxes of unmanifested fresh yams (B/L # DOLQ MOI000023ILG, Container # DFIU4100573 - manifested as a shipment of 1097 bags of pumpkins) from Costa Rica into the United States at Port of Wilmington, Delaware, and failed to notify USDA of the arrival of the shipment of the yams and other required information regarding the shipment of yams from Costa Rica.

5. On or about January 14, 2001, the respondent imported approximately eight hundred (800) boxes of unmanifested fresh yams (B/L # DOLQ MOI000023ILG, Container # DFIU4100573 - manifested as a shipment of 1097 bags of pumpkins) from Costa Rica into the United States at Port of Wilmington, Delaware, and failed to offer the shipment for entry at the port of first arrival.

6. On or about July 4, 2001, the respondent imported approximately 64 boxes of unmanifested fresh giant passion fruit (grandillas) (B/L # MAEU SDQ019342, Container #

MHHU 560894-8 - manifested as a shipment of papayas and other fruit) from the Dominican Republic into the United States at Elizabeth, NJ, which is allowed only under specifically met conditions.

7. On or about July 4, 2001, the respondent imported approximately 64 boxes of unmanifested fresh giant passion fruit (grandillas) (B/L # MAEU SDQ019342, Container # MHHU 560894-8 - manifested as a shipment of papayas and other fruit) from the Dominican Republic into the United States at Elizabeth, NJ, without a permit.

8. On or about July 4, 2001, the respondent imported approximately 64 boxes of unmanifested fresh giant passion fruit (grandillas) (B/L # MAEU SDQ019342, Container # MHHU 560894-8 - manifested as a shipment of papayas and other fruit) from the Dominican Republic into the United States at Elizabeth, NJ, but failed to offer the shipment for entry at the port of first arrival.

9. On or about July 11, 2001, respondent imported approximately 73 boxes of unmanifested giant passion fruit (grandillas) (B/L # MAEU SDQ 019555, Container # MWCUC 613302-7 - manifested as a shipment of papayas and other fruit) from the Dominican Republic into the United States at Elizabeth, NJ, which is allowed only under specifically met conditions.

10. On or about July 11, 2001, respondents imported approximately 73 boxes of unmanifested giant passion fruit (grandillas) (B/L # MAEU SDQ 019555, Container # MWCUC 613302-7 - manifested as a shipment of papayas and other fruit) from the Dominican Republic into the United States at Elizabeth, NJ, without a permit.

11. On or about July 11, 2001, respondents imported approximately 73 boxes of unmanifested giant passion fruit (grandillas) (B/L # MAEU SDQ 019555, Container # MWCUC 613302-7 - manifested as a shipment of papayas and other fruit) from the Dominican Republic into the United States at Elizabeth, NJ, but failed to offer the shipment for entry at the port of first arrival.

12. On or about July 11, 2001, respondents imported approximately 144 bags of unmanifested fresh wet green coconuts with husk (B/L # MAEU SDQ 019555, Container # MWCU 613302-7 - manifested as a shipment of papayas and other fruit) from the Dominican Republic into the United States at Elizabeth, NJ, which is allowed only under specifically met conditions.

13. On or about July 11, 2001, respondents imported approximately 144 bags of unmanifested fresh wet green coconuts with husk (B/L # MAEU SDQ 019555, Container # MWCU 613302-7 - manifested as a shipment of papayas and other fruit) from the Dominican Republic into the United States at Elizabeth, NJ, without a permit.

14. On or about July 11, 2001, respondents imported approximately 144 bags of unmanifested fresh wet green coconuts with husk (B/L # MAEU SDQ 019555, Container # MWCU 613302-7 - manifested as a shipment of papayas and other fruit) from the Dominican Republic into the United States at Elizabeth, NJ, but failed to offer the shipment for entry at the port of first arrival.

15. On or about January 10, 2002, respondent imported approximately 100 boxes of unmanifested fresh yams (B/L # DOLQ MOI 05045POE, Container # DFIU 6201937 - manifested as eddoes, squash, and other vegetables) from Costa Rica into the United States at Ft. Lauderdale, FL, without a permit.

16. On or about January 10, 2002, respondent imported approximately 100 boxes of unmanifested fresh yams (B/L # DOLQ MOI 05045POE, Container # DFIU 6201937 - manifested as eddoes, squash, and other vegetables) from Costa Rica into the United States at Ft. Lauderdale, FL, but failed to notify USDA of the arrival of the shipment.

17. On or about January 10, 2002, respondent imported approximately 100 boxes of unmanifested fresh yams (B/L # DOLQ MOI 05045POE, Container # DFIU 6201937 - manifested as eddoes, squash, and other vegetables) from Costa Rica into the United States at Ft. Lauderdale, FL, without a permit.

18. On or about January 10, 2002, respondent imported approximately 100 boxes of unmanifested fresh yams (B/L # DOLQ MOI 05045POE, Container # DFIU 6201937 - manifested as eddoes, squash, and other vegetables) from Costa Rica into the United States at Ft. Lauderdale, FL, but failed to offer the shipment for entry at the port of first arrival.

19. On or about April 13, 2002, respondent imported approximately 100 boxes of unmanifested tamarind (B/L # DOLQ MOI 09594ILG, Container # DFIU 3002335 - manifested as 1250 boxes of cassava) from Costa Rica into the United States at Wilmington, DE, but failed to notify USDA of the arrival of the shipment.

20. On or about April 13, 2002, respondent imported approximately 100 boxes of unmanifested tamarind (B/L # DOLQ MOI 09594ILG, Container # DFIU 3002335 - manifested as 1250 boxes of cassava) from Costa Rica into the United States at Wilmington, DE, but failed to offer the shipment for entry at the port of first arrival.

21. On or about June 8, 2002, respondent imported approximately 282 boxes of unmanifested yams (B/L # DOLQ MOI 10675ILG, Container # TSGU 1052562 - manifested as a 1000 boxes of yams) from Costa Rica into the United States at Wilmington, DE, but failed to notify USDA of the arrival of the shipment.

22. On or about June 8, 2002, respondent imported approximately 282 boxes of unmanifested yams (B/L # DOLQ MOI 10675ILG, Container # TSGU 1052562 - manifested as a 1000 boxes of yams) from Costa Rica into the United States at Wilmington, DE, but failed to offer the shipment of the 282 boxes of yams for entry at the port of first arrival.

23. On or about June 8, 2002, respondent imported approximately 292 boxes of unmanifested malanga (dasheen) (B/L # DOLQ MOI 10674ILG, Container # GCEU 6028125 - manifested as 1000 boxes of malanga [dasheen]) from Costa Rica into the United States at Wilmington, DE, but failed to notify USDA of the arrival of the shipment of the 292 boxes of unmanifested malanga (dasheen).

24. On or about June 8, 2002, respondent imported approximately 292 boxes of unmanifested malanga (dasheen) (B/L # DOLQ MOI 10674ILG, Container # GCEU 6028125 - manifested as 1000 boxes of malanga [dasheen]) from Costa Rica into the United States at Wilmington, DE, but failed to offer the shipment of 292 boxes of malanga (dasheen) for entry at the port of first arrival.

25. On or about June 23, 2002, respondent imported one full container (approximately 1304 boxes) of unmanifested chayote (B/L # DOLQ MOI 11204ILG, Container # DFIU 3106427 - manifested as cassava and other vegetables) from Costa Rica into the United States at Wilmington, DE, but failed to notify USDA of the arrival of the shipment of the 1304 boxes of unmanifested chayote.

26. On or about June 23, 2002, respondent imported one full container (approximately 1304 boxes) of unmanifested chayote (B/L # DOLQ MOI 11204ILG, Container # DFIU 3106427 - manifested as cassava and other vegetables) from Costa Rica into the United States at Wilmington, DE, but failed to offer the shipment of 1304 boxes of chayote for entry at the port of first arrival.

27. On or about November 6, 2003, respondent sold, shipped, and moved 13 cases (approximately 36 avocados per case) of Mexican hass avocados (respondent invoice # 854651) from New York state, United States, to San Juan, Puerto Rico (American Airlines Air waybill # 001-28478144) and thereby moved the Mexican Hass avocados from a quarantined State to a State or area not quarantined.

### Conclusions

The respondent has admitted the jurisdictional facts and have agreed to the following Order in disposition of this proceeding; therefore, this Consent Decision will be issued.

Order

The respondent, "R" Best Produce, Inc., is assessed a civil penalty of forty-five thousand dollars (\$45,000.00). The respondent shall make a certified check or money order for forty-five thousand dollars (\$45,000.00), payable to the Treasurer of the United States, and send it to United States Department of Agriculture, APHIS, Accounts Receivable, P.O. Box 3334, Minneapolis, Minnesota 55403, within thirty (30) days from the effective date of this Order. The certified check or money order should include the docket number of this proceeding which is P.Q. Docket No. 05-0002.

This Order shall become effective when served on the respondent or his attorney of record, whichever occurs first.

[Redacted signature]

CARL F. DELPRETE  
For "R" BEST PRODUCE, INC.  
Respondent

[Redacted signature]

JAMES A. BOOTH  
Attorney for Complainant

and

[Redacted signature]

STEPHEN P. McCARRON,  
Attorney for Respondent

Issued this 1st day of February, 2006

at Washington, D.C.

[Redacted signature]  
Administrative Law Judge