

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P.Q. Docket No. 02-0008
)
Jody Eleneki,)
) DEFAULT DECISION AND ORDER
Respondent)

This is an administrative proceeding for the assessment of a civil penalty for violations of the Plant Protection Act (7 U.S.C. §§ 7701 et seq. (Act) and the regulation promulgated thereunder (7 C.F.R. § 318.60) (regulation), 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 by a complaint filed on June 19, 2002 by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The complaint alleged the following:

On or about April 18, 2001, at Honolulu, Hawaii, the respondent offered to a common carrier, specifically Federal Express, approximately 1.5 pounds of rooted ginger plants with soil for shipment from Hawaii to the continental United States, in violation of 7 C.F.R. § 318.60, because movement of such plants with soil from Hawaii into or through the continental United States is prohibited.

The respondent failed to file an answer to the complaint

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. § 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. The failure to file an answer also constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material allegations in the complaint are adopted and set forth herein 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. Jody Eleneki, respondent herein, is an individual whose mailing address is Title Guaranty Escrow Services, Inc., 450 Kilauea Avenue, Hilo, Hawaii 96720.

2. On or about April 18, 2001, respondent **offered to a common carrier, specifically Federal Express, approximately 1.5 pounds of rooted ginger plants with soil for shipment from Hawaii to the continental United States.**

Conclusion

By reasons of the facts contained in the Findings of Facts above, the respondent has violated 7 C.F.R. § 318.60. Therefore, the following Order is issued.

Order

The respondent is hereby assessed a penalty of five hundred

dollars(\$500.00). 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 55403
Minneapolis, Minnesota 55403

Respondents shall indicate that payment is in reference to P.Q. Docket No. 02-0008.

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 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
7th day of September, 2004

/s/ Marc R. Hillson
Administrative Law Judge