

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P.Q. Docket No. 99-0045
)
Norea Ivelisse Abreu,)
)
Respondent) **Decision and Order**

PROCEDURAL HISTORY

Craig A. Reed, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on June 4, 1999. Complainant instituted this proceeding under the Act of August 20, 1912, as amended (7 U.S.C. §§ 151-167) [hereinafter the Plant Quarantine Act]; regulations issued under the Plant Quarantine Act (7 C.F.R. §§ 319.56-.56-8); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

Complainant alleges that on or about July 9, 1998, Norea Ivelisse Abreu [hereinafter Respondent] imported one jar of fresh, peeled mangoes from the Dominican Republic into the United States at Jamaica, New York, in violation of 7 C.F.R. § 319.56 because the importation of mangoes from the Dominican Republic into the United States

is prohibited (Compl. ¶ II). On June 24, 1999, Respondent filed a letter dated January 16, 1999 [hereinafter Answer], admitting the material allegations of the Complaint.

On September 10, 2001, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a Motion for Adoption of Proposed Default Decision and Order and a Proposed Default Decision and Order. On October 9, 2001, the Hearing Clerk served Respondent with Complainant's Motion for Adoption of Proposed Default Decision and Order and a service letter, dated September 11, 2001.¹ Respondent failed to file objections to Complainant's Motion for Adoption of Proposed Default Decision and Order within 20 days after service, as required by section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). The Hearing Clerk sent Respondent a letter, dated November 1, 2001, stating that objections to Complainant's Motion for Adoption of Proposed Default Decision and Order had not been filed within the allotted time and that the record was being referred to an administrative law judge for consideration and decision.

On November 7, 2001, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Administrative Law Judge Dorothea A. Baker [hereinafter the ALJ] issued a Default Decision and Order [hereinafter Initial Decision and Order]: (1) finding that on or about July 9, 1998, Respondent imported one jar of fresh, peeled mangoes from the

¹ Memorandum to the File dated October 9, 2001, from Regina Paris, Hearing Clerk's Office.

Dominican Republic into the United States at Jamaica, New York, in violation of 7 C.F.R. § 319.56 because the importation of mangoes from the Dominican Republic into the United States is prohibited; (2) concluding that Respondent violated 7 C.F.R. § 319.56; and (3) assessing Respondent a \$500 civil penalty (Initial Decision and Order at 2-3).

On December 27, 2001, Respondent appealed to the Judicial Officer. On January 15, 2002, Complainant filed Complainant's Response to Respondent's Appeal to Judicial Officer. On January 16, 2002, the Hearing Clerk transmitted the record to the Judicial Officer for a decision.

Based upon a careful consideration of the record, I agree with the ALJ's Initial Decision and Order, except that I issue an Order that provides for Respondent's payment of the civil penalty in installments. Therefore, pursuant to section 1.145(i) of the Rules of Practice (7 C.F.R. § 1.145(i)), I adopt with minor modifications the Initial Decision and Order as the final Decision and Order. Additional conclusions by the Judicial Officer follow the ALJ's conclusion of law, as restated.

APPLICABLE STATUTORY AND REGULATORY PROVISIONS

7 U.S.C.:

TITLE 7 AGRICULTURE

.....

**CHAPTER 8 NURSERY STOCK AND OTHER PLANTS
AND PLANT PRODUCTS**

.....

**§ 163. Violations; forgery, alterations, etc., of certificates; punishment;
civil penalty**

Any person who knowingly violates any provision of this chapter or any rule or regulation promulgated by the Secretary of Agriculture under this chapter, or who knowingly forges or counterfeits any certificate provided for in this chapter or in any such rule or regulation, or who, knowingly and without the authority of the Secretary, uses, alters, defaces, or destroys any such certificate shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not exceeding \$5,000, by imprisonment not exceeding one year, or both. Any person who violates any such provision, rule, or regulation, or who forges or counterfeits any such certificate, or who, without the authority of the Secretary, uses, alters, defaces, or destroys any such certificate, may be assessed a civil penalty by the Secretary not exceeding \$1,000. The Secretary may issue an order assessing such civil penalty only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable under chapter 158 of title 28. The validity of such order may not be reviewed in an action to collect such civil penalty.

7 U.S.C. § 163.

7 C.F.R.:

TITLE 7 AGRICULTURE

....

SUBTITLE B REGULATIONS OF THE DEPARTMENT OF AGRICULTURE

....

**CHAPTER III ANIMAL AND PLANT HEALTH INSPECTION SERVICE,
DEPARTMENT OF AGRICULTURE**

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PART 319 FOREIGN QUARANTINE NOTICES

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SUBPART F FRUITS AND VEGETABLES

QUARANTINE

§ 319.56 Notice of quarantine.

(a) The fact has been determined by the Secretary of Agriculture, and notice is hereby given:

(1) That there exist in Europe, Asia, Africa, Mexico, Central America, and South America, and other foreign countries and localities, certain injurious insects, including fruit and melon flies (Tephritidae), new to and not heretofore widely distributed within and throughout the United States, which affect and may be carried by fruits and vegetables commercially imported into the United States or brought to the ports of the United States as ships stores or casually by passengers or others, and

(2) That the unrestricted importation of fruits and vegetables from the countries and localities enumerated may result in the entry into the United States of injurious insects, including fruit and melon flies (Tephritidae).

(b) The Secretary of Agriculture, under authority conferred by the act of Congress approved August 20, 1912 (37 Stat. 315; 7 U.S.C. 151-167), does hereby declare that it is necessary, in order to prevent the introduction into the United States of certain injurious insects, including fruit and melon flies (Tephritidae), to forbid, except as provided in the rules

and regulations supplemental hereto, the importation into the United States of fruits and vegetables from the foreign countries and localities named and from any other foreign country or locality, and of plants and portions of plants used as packing material in connection with shipments of such fruits and vegetables.

(c) On and after November 1, 1923, and until further notice, the importation from all foreign countries and localities into the United States of fruits and vegetables, and of plants or portions of plants used as packing material in connection with shipments of such fruits and vegetables, except as provided in the rules and regulations supplemental hereto, is prohibited: *Provided*, That whenever the Deputy Administrator for the Plant Protection and Quarantine Programs shall find that existing conditions as to pest risk involved in the importation of the articles to which the regulations supplemental hereto apply, make it safe to modify, by making less stringent, the restrictions contained in any of such regulations, he shall publish such findings in administrative instructions, specifying the manner in which the regulations shall be made less stringent, whereupon such modification shall become effective; or he may, when the public interests will permit, with respect to the importation of such articles into Guam, upon request in specific cases, authorize such importation under conditions, specified in the permit to carry out the purposes of this subpart, that are less stringent than those contained in the regulations.

(d) This section leaves in full effect all special quarantines and other orders now in force restricting the entry into the United States of fruits and vegetables with the exception of Quarantine No. 49, with regulations, on account of citrus black fly, which is replaced by this section.

(e) As used in this section unless the context otherwise requires, the term United States means the continental United States, Guam, Hawaii, Puerto Rico, and the Virgin Islands of the United States.

7 C.F.R. § 319.56.

**ADMINISTRATIVE LAW JUDGE S
INITIAL DECISION AND ORDER
(AS RESTATED)**

Respondent admitted the material allegations of the Complaint in Respondent s Answer. Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) provides that the

admission by the answer of all the material allegations of the complaint shall constitute a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as findings of fact, and this Decision and Order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Norea Ivelisse Abreu is an individual whose mailing address is 708 Evergreen Avenue, Apartment #2, Brooklyn, New York 11207-1134.

2. On or about July 9, 1998, Respondent imported one jar of fresh, peeled mangoes from the Dominican Republic into the United States at Jamaica, New York, in violation of 7 C.F.R. § 319.56, because the importation of mangoes from the Dominican Republic into the United States is prohibited.

Conclusion of Law

By reason of the findings of fact, Respondent violated 7 C.F.R. § 319.56.

ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Respondent raises two issues in her letter, dated November 21, 2001, to Ms. Regina Paris [hereinafter Appeal Petition]. First, Respondent states it was not my intention to break any laws of this country (Appeal Pet.).

Respondent's contention that she did not intentionally violate 7 C.F.R. § 319.56 is not relevant to this administrative proceeding for the assessment of a civil penalty. The plain language of section 10 of the Plant Quarantine Act (7 U.S.C. § 163) establishes that

intent is not an element of a violation of a regulation issued under the Plant Quarantine Act in a disciplinary administrative proceeding for the assessment of a civil penalty.² The

²See *In re Herminia Ruiz Cisneros*, 60 Agric. Dec. ____, slip op. at 27-28 (July 11, 2001) (stating, in order to achieve the congressional purpose of the Plant Quarantine Act, violators are held responsible for their violations irrespective of their lack of evil motive or intent to violate the Plant Quarantine Act or the regulations issued under the Plant Quarantine Act); *In re Rafael Dominguez*, 60 Agric. Dec. ____, slip op. at 12 (Feb. 26, 2001) (stating, in order to achieve the congressional purpose of the Plant Quarantine Act and to prevent the spread of plant pests, violators are held responsible for any violation irrespective of their lack or evil motive or intent to violate the Plant Quarantine Act); *In re Cynthia Twum Boafo*, 60 Agric. Dec. ____, slip op. at 8 (Feb. 21, 2001) (stating, in order to achieve the congressional purpose of the Plant Quarantine Act and to prevent the spread of plant pests, violators are held responsible for any violation irrespective of their lack or evil motive or intent to violate the Plant Quarantine Act); *In re Bibi Uddin*, 55 Agric. Dec. 1010, 1021-22 (1996) (stating, in order to achieve the congressional purpose of the Plant Quarantine Act and to prevent the importation of items that could be disastrous to United States agriculture, it is necessary to hold violators responsible irrespective of their lack of evil motive or intent to violate the Plant Quarantine Act or the regulations issued under the Plant Quarantine Act); *In re Francisco Escobar, Jr.*, 54 Agric. Dec. 392, 418 (1995) (stating it is irrelevant to the assessment of a civil penalty under the Federal Plant Pest Act, the Plant Quarantine Act, and the Act of February 2, 1903, that the respondent had no intention of bringing items into the United States), *aff d per curiam*, 68 F.3d 466 (5th Cir. 1995) (Table); *In re Robert N. Watts, Jr.*, 53 Agric. Dec. 1419, 1428 (1994) (stating, under the Federal Plant Pest Act and the Plant Quarantine Act, intent is not an element of a violation in a disciplinary administrative proceeding for the assessment of a civil penalty); *In re Unique Nursery & Garden Center* (Decision as to Valkering, U.S.A., Inc.), 53 Agric. Dec. 377, 421-22 (1994) (stating, under the Federal Plant Pest Act and the Plant Quarantine Act, intent is not an element of a violation in a disciplinary administrative proceeding for the assessment of a civil penalty), *aff d*, 48 F.3d 305 (8th Cir. 1995); *In re Shulamis Kaplinsky*, 47 Agric. Dec. 613, 636 (1988) (assessing the respondent a civil penalty under the Plant Quarantine Act for the unlawful importation of approximately 4 peaches and approximately 5 plums placed in the respondent's baggage without her knowledge); *In re Kathleen D. Warner*, 46 Agric. Dec. 763 (1987) (Ruling on Certified Question) (concluding the respondent could be assessed a civil penalty for an inadvertent or unintentional violation of the plant quarantine laws caused by a misunderstanding or failure of communication between the

(continued...)

term *knowingly* in section 10 of the Plant Quarantine Act (7 U.S.C. § 163) is only used in connection with criminal proceedings. Therefore, even if I were to find that Respondent's violation of 7 C.F.R. § 319.56 was unintentional, as Respondent contends, that finding would not constitute a basis for my reversing the ALJ's conclusion that Respondent violated 7 C.F.R. § 319.56.

Second, Respondent requests that she be allowed to pay the \$500 civil penalty assessed against her by the ALJ in installments. Respondent does not indicate either a number of installments or a time between each installment. (Appeal Pet.) Complainant has no objection to my issuing an Order that assesses Respondent a \$500 civil penalty to be paid in 10 monthly installments of \$50 each (Complainant's Response to Respondent's Appeal to Judicial Officer at second and third unnumbered pages).

Pursuant to Respondent's request that she be allowed to pay the \$500 civil penalty assessed against her by the ALJ in installments and Complainant's lack of objection to Respondent's paying a \$500 civil penalty in installments of \$50 per month, I issue an

²(...continued)

respondent and an oriental inspector); *In re Mercedes Capistrano*, 45 Agric. Dec. 2196, 2198 (1986) (assessing the respondent a civil penalty under the Plant Quarantine Act for the unlawful importation of plantains placed in the respondent's luggage without her knowledge); *In re Rene Vallalta*, 45 Agric. Dec. 1421, 1423 (1986) (assessing the respondent a civil penalty under the Plant Quarantine Act for the unlawful importation of a cacao seed pod placed in the respondent's luggage without his knowledge); *In re Richard Duran Lopez*, 44 Agric. Dec. 2201, 2209 (1985) (stating, under the Plant Quarantine Act, intent is not an element of a violation in a disciplinary administrative proceeding for the assessment of a civil penalty).

Order assessing Respondent a \$500 civil penalty to be paid in installments of \$50 per month.

Complainant contends Respondent has not offered an appropriate basis for an appeal and has not satisfied the rules of practice governing appeals. Complainant believes that Respondent's appeal should be denied. (Complainant's Response to Respondent's Appeal to Judicial Officer at second unnumbered page.)

Section 1.145(a) of the Rules of Practice provides the basis for filing an appeal and the requirements for the appeal petition, as follows:

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, a party who disagrees with the decision, or any part thereof, or any ruling by the Judge or any alleged deprivation of rights, may appeal such decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the petition, and the arguments thereon, shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations of the record, statutes, regulations or authorities being relied upon in support thereof. A brief may be filed in support of the appeal simultaneously with the petition.

7 C.F.R. § 1.145(a).

Respondent's Appeal Petition establishes that she disagrees with the ALJ's Initial Decision and Order. Moreover, Respondent plainly and concisely states each issue in her Appeal Petition. Respondent fails to number each issue in her Appeal Petition and does not provide citations of the record, statutes, regulations, or authorities upon which she

relies. However, based on the small number of issues in Respondent s Appeal Petition and the nature of the issues in Respondent s Appeal Petition, I do not find that Respondent s failure to number the issues which she raises or Respondent s failure to provide citations of the record, statutes, regulations, and authorities upon which she relies, sufficient to deny Respondent s Appeal Petition, as Complainant requests.

For the foregoing reasons, the following Order should be issued.

ORDER

Respondent is assessed a \$500 civil penalty. The civil penalty shall be paid by certified checks or money orders, made payable to the Treasurer of the United States, and sent to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, MN 55403

Respondent shall make payments of \$50 each month for 10 consecutive months. Respondent s initial payment of \$50 shall be sent to, and received by, the United States Department of Agriculture, APHIS Field Servicing Office, Accounting Section, within 60 days after service of this Order on Respondent. If Respondent is late in making any

payment or misses any payment, then all remaining payments shall become immediately due and payable in full. Respondent shall state on each certified check or money order that payment is in reference to P.Q. Docket No. 99-0045.

Done at Washington, DC

January 24, 2002

William G. Jenson
Judicial Officer