

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.,)
) **Decision and Order as to**
Respondents) **Bobby L. Shields**

PROCEDURAL HISTORY

Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on September 23, 2003. Complainant instituted this proceeding under the Plant Protection Act (7 U.S.C. §§ 7701-7772) and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151; 380.1-.10) [hereinafter the Rules of Practice].

Complainant alleges that, on or about September 1, 2001, 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. [hereinafter Respondents], violated section 413(c) of the Plant Protection Act (7 U.S.C. § 7713(c)) by moving from a port of entry cargo from the Bahamas manifested as “toys and crafts” (container number 2929862, bill of lading number 1) without inspection by, and authorization for entry or transit through the United States from, the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine (Compl. ¶ II).

The Hearing Clerk served Respondent Bobby L. Shields with the Complaint, the Rules of Practice, and a service letter on October 23, 2003.¹ Respondent Bobby L. Shields was required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) to file a response to the Complaint within 20 days after service. On October 29, 2003, Respondent Bobby L. Shields requested an extension of time within which to file an answer to the Complaint. On October 30, 2003, Chief Administrative Law Judge Marc R. Hillson [hereinafter the Chief ALJ] granted Respondent Bobby L. Shields an extension to November 14, 2003, within which to file an answer to the Complaint.² On November 19, 2003, Respondent Bobby L. Shields filed a letter stating discrepancies regarding the handling of the shipment referenced in the Complaint should be addressed to Respondent St. Johns Shipping Company, Inc.

¹United States Postal Service Domestic Return Receipt for Article Number 7001 0360 0000 0304 4015.

²Order Extending Time to File Answer to Complaint.

On February 26, 2004, 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. The Hearing Clerk served Respondent Bobby L. Shields with Complainant's Motion for Adoption of Proposed Default Decision and Order, Complainant's Proposed Default Decision and Order, and a service letter on March 1, 2004.³ Respondent Bobby L. Shields failed to file objections to Complainant's Motion for Adoption of Proposed Default Decision and Order and Complainant's 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).

On December 22, 2004, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the Chief ALJ issued a Default Decision and Order [hereinafter Initial Decision and Order]: (1) finding that on or about September 1, 2001, Respondent Bobby L. Shields violated section 413(c) of the Plant Protection Act (7 U.S.C. § 7713(c)) by moving from a port of entry cargo from the Bahamas manifested as "toys and crafts" (container number 2929862, bill of lading number 1) without inspection by, and authorization for entry or transit through the United States from, the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine; (2) concluding that Respondent Bobby L. Shields violated the Plant Protection Act and the regulations issued under the Plant Protection Act; and (3)

³United States Postal Service Domestic Return Receipt for Article Number 7001 0360 0000 0304 7696.

assessing Respondent Bobby L. Shields a \$1,000 civil penalty (Initial Decision and Order at 3-4).

On January 21, 2005, Respondent Bobby L. Shields appealed to the Judicial Officer. On January 27, 2005, Complainant filed "Complainant's Response to Respondent's Appeal." On January 31, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

Based upon a careful consideration of the record, I agree with the Chief ALJ's Initial Decision and Order. Therefore, pursuant to section 1.145(i) of the Rules of Practice (7 C.F.R. § 1.145(i)), I adopt the Initial Decision and Order as the final Decision and Order as to Bobby L. Shields with minor modifications. Additional conclusions by the Judicial Officer follow the Chief ALJ's conclusion of law, as restated.

APPLICABLE STATUTORY PROVISIONS

7 U.S.C.:

TITLE 7—AGRICULTURE

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CHAPTER 104—PLANT PROTECTION

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SUBCHAPTER I—PLANT PROTECTION

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§ 7713. Notification and holding requirements upon arrival

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(c) Prohibition on movement of items without authorization

No person shall move from a port of entry or interstate any imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance unless the imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance—

- (1) is inspected and authorized for entry into or transit movement through the United States; or
- (2) is otherwise released by the Secretary.

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SUBCHAPTER II—INSPECTION AND ENFORCEMENT

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§ 7734. Penalties for violation

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(b) Civil penalties

(1) In general

Any person that violates this chapter, or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this chapter may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary that does not exceed the greater of—

(A) \$50,000 in the case of any individual (except that the civil penalty may not exceed \$1,000 in the case of an initial violation of this chapter by an individual moving regulated articles not for monetary gain), \$250,000 in the case of any other person for each violation, and \$500,000 for all violations adjudicated in a single proceeding; or

(B) twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided for in this chapter that results in the person deriving pecuniary gain or causing pecuniary loss to another.

(2) Factors in determining civil penalty

In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstance, extent, and gravity of the violation or violations and the Secretary may consider with respect to the violator—

- (A) ability to pay;
- (B) effect on ability to continue to do business;
- (C) any history of prior violations;
- (D) the degree of culpability; and
- (E) any other factors the Secretary considers

appropriate.

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(4) Finality of orders

The order of the Secretary assessing a civil penalty shall be treated as a final order reviewable under chapter 158 of title 28. The validity of the Secretary's order may not be reviewed in an action to collect the civil penalty. Any civil penalty not paid in full when due under an order assessing the civil penalty shall thereafter accrue interest until paid at the rate of interest applicable to civil judgments of the courts of the United States.

7 U.S.C. §§ 7713(c), 7734(b)(1)-(2), (4).

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

Respondent Bobby L. Shields failed to file an answer that denies or otherwise responds to the allegations of the Complaint, as required by section 1.136(b) of the Rules of Practice (7 C.F.R. § 1.136(b)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides the failure to deny or otherwise respond to the allegations of the complaint shall be deemed an admission of the allegations in the complaint. Further, the admission by the answer of all material allegations of the complaint constitutes a waiver of hearing (7 C.F.R. § 1.139). Accordingly, the material allegations in the Complaint are adopted as Findings of Fact, and this Decision and Order as to Bobby L. Shields is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Bobby L. Shields 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 L. Shields violated section 413(c) of the Plant Protection Act (7 U.S.C. § 7713(c)) by moving from a port of entry cargo from the Bahamas manifested as “toys and crafts” (container number 2929862, bill of lading number 1), without inspection by, and authorization for entry into or transit through the United States from, the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine.

3. Section 413(c) of the Plant Protection Act (7 U.S.C. § 7713(c)) prohibits any person from moving any imported plant, plant product, plant pest, noxious weed, or article from a port of entry unless the imported plant, plant product, plant pest, noxious weed, or article is inspected and authorized for entry into or transit through the United States or otherwise released by the Secretary of Agriculture.

Conclusion of Law

By reason of the findings of fact, Respondent Bobby L. Shields has violated the Plant Protection Act and the regulations issued under the Plant Protection Act.

ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Respondent Bobby L. Shields raises two issues in his appeal petition. First, Respondent Bobby L. Shields contends Bahamas RO RO Services, Inc., had no authority to handle articles of international trade; therefore, Bahamas RO RO Services, Inc., cannot be found to have violated section 413(c) of the Plant Protection Act (7 U.S.C. § 7713(c)), as alleged in the Complaint.

As an initial matter, a respondent's authority to handle articles of international trade is not relevant to whether that same respondent actually moved from a port of entry cargo without inspection by, and authorization for entry or transit through the United States from, the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine. Moreover, Respondent Bobby L. Shields, by his failure to file an answer denying or otherwise responding to the allegations of the Complaint, is deemed to have admitted the allegations of the Complaint and waived opportunity for hearing.

Second, Respondent Bobby L. Shields requests that no civil penalty be assessed because Bahamas RO RO Services, Inc., is not able to pay the \$1,000 civil penalty.

One of the factors the Secretary of Agriculture may consider in determining the amount of a civil penalty is the ability of the violator to pay the civil penalty.⁴ As an initial matter, Respondent Bobby L. Shields' assertion that Bahamas RO RO Services, Inc., is not able to pay the \$1,000 civil penalty is not relevant to the violator's ability to pay because the violator is not Bahamas RO RO Services, Inc., but rather Respondent Bobby L. Shields, d/b/a Bahamas RO RO Services, Inc. Moreover, even if Bahamas RO RO Services, Inc., were the violator, I would not reduce or eliminate the civil penalty based on Respondent Bobby L. Shields' assertion that Bahamas RO RO Services, Inc., is not able to pay the \$1,000 civil penalty. A violator's inability to pay a civil penalty is a

⁴See 7 U.S.C. § 7734(b)(2)(A).

mitigating circumstance to be considered for the purpose of determining the amount of the civil penalty to be assessed in plant quarantine cases; however, the burden is on the respondents in plant quarantine cases to prove, by producing documentation, the inability to pay the civil penalty.⁵ Respondent Bobby L. Shields has failed to produce any documentation supporting his assertion that Bahamas RO RO Services, Inc., cannot pay a civil penalty, and Respondent Bobby L. Shields' undocumented assertion that Bahamas RO RO Services, Inc., is not able to pay the civil penalty falls far short of the proof necessary to establish an inability to pay the civil penalty.⁶

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

⁵*In re Herminia Ruiz Cisneros*, 60 Agric. Dec. 610, 634-35 (2001); *In re Rafael Dominguez*, 60 Agric. Dec. 199, 208-09 (2001); *In re Cynthia Twum Boafo*, 60 Agric. Dec. 191, 197-98 (2001); *In re Barry Glick*, 55 Agric. Dec. 275, 283 (1996); *In re Robert L. Heywood*, 52 Agric. Dec. 1323, 1324-25 (1993); *In re Robert L. Heywood*, 52 Agric. Dec. 1315, 1321-22 (1993) (Decision and Order and Remand Order).

⁶*In re Herminia Ruiz Cisneros*, 60 Agric. Dec. 610, 635 (2001) (holding the undocumented assertion by the respondent that she was unable to pay the civil penalty falls far short of the proof necessary to establish inability to pay); *In re Rafael Dominguez*, 60 Agric. Dec. 199, 209 (2001) (holding the undocumented assertion by the respondent that he was unable to pay the civil penalty falls far short of the proof necessary to establish inability to pay); *In re Cynthia Twum Boafo*, 60 Agric. Dec. 191, 198 (2001) (holding undocumented assertions by the respondent that she was unable to pay the civil penalty fall far short of the proof necessary to establish inability to pay); *In re Barry Glick*, 55 Agric. Dec. 275, 283 (1996) (holding undocumented assertions by the respondent that he lacked the assets to pay the civil penalty are not sufficient to prove inability to pay the civil penalty); *In re Don Tollefson*, 54 Agric. Dec. 437, 439 (1995) (assessing the full civil penalty despite the respondent's submission of some documentation of financial problems) (Order Denying Pet. for Recons.); *In re Robert L. Heywood*, 52 Agric. Dec. 1323, 1325 (1993) (assessing the full civil penalty because the respondent did not produce documentation establishing his inability to pay the civil penalty).

ORDER

Respondent Bobby L. Shields is assessed a \$1,000 civil penalty. The civil penalty shall be paid by certified check or money order, 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, Minnesota 55403

Payment of the civil penalty 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 Bobby L. Shields. Respondent Bobby L. Shields shall state on the certified check or money order that payment is in reference to P.Q. Docket No. 03-0015.

RIGHT TO JUDICIAL REVIEW

The Order assessing Respondent Bobby L. Shields a civil penalty is a final order reviewable under 28 U.S.C. §§ 2341-2351.⁷ Respondent Bobby L. Shields must seek judicial review within 60 days after entry of the Order.⁸ The date of entry of the Order is March 1, 2005.

Done at Washington, DC

March 1, 2005

William G. Jenson
Judicial Officer

⁷See 7 U.S.C. § 7734(b)(4).

⁸See 28 U.S.C. § 2344.