

**In re: CHRIS VALEK.  
P.Q. Docket No. 01-0012.  
Decision Without Hearing By Reason Of Default.  
Filed January 25, 2002.**

**PQ – Default – Failure to answer.**

Rick Herndon, for Complainant.  
Respondent, Pro se.  
*Decision and Order issued by James W. Hunt, Administrative Law Judge.*

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the movement of Hawaiian fruits and vegetables (7 C.F.R. §§ 318.13 *et seq.*), 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 by a complaint filed on June 6, 2000, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. This complaint alleged that on or about June 7, 1999, Respondent offered for shipment to a common carrier, namely, the United States Postal Service, approximately 4.4 pounds of fresh mangoes from Hawaii into the continental United States in violation of Sections 318.13(b) and 318.13-2(a)(1) of the regulations (7 C.F.R. §§ 318.13(b), 318.13-2(a)(1)) because such plant parts are prohibited movement from Hawaii into the continental United States.

Respondent filed an answer which admitted the material allegations of the complaint but indicated that he believed the fine was \$100.00. Complainant seeks a penalty of \$500.00. An Order was issued directing the parties to show cause whether Respondent was advised that the fine would be \$100.00.

In a letter filed on December 7, 2001, Respondent stated that he was unaware that he had committed a violation. Complainant responded to the show cause order that it offered to settle the matter with a \$100.00 fine but that Respondent rejected the offer. In the circumstances, a penalty of \$500.00 will be imposed.

Respondent's admission of the material facts in the complaint 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. 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. Chris Valek, hereafter referred to as the Respondent, is an individual with a mailing address of 66-619 Kam Highway, Haleiwa, Hawaii 96712. In Respondent's December 7, 2001, letter to the Hearing Clerk, he listed his address

as 1354 Chenango Street, Binghamton, New York 13901.

2. On or about June 7, 1999, Respondent offered for shipment to a common carrier, namely, the United States Postal Service, approximately 4.4 pounds of fresh mangoes from Hawaii into the continental United States in violation of Sections 318.13(b) and 318.13-2(a)(1) of the regulations (7 C.F.R. §§ 318.13(b), 318.13-2(a)(1)) because such plant parts are prohibited movement from Hawaii into the continental United States.

### **Conclusion**

By reason of the facts contained in the Findings of Fact above, Respondent has violated 7 C.F.R. §§ 318.13(b), 318.13-2(a)(1). Therefore, the following Order is issued.

### **Order**

Respondent, Chris Valek, is hereby assessed a civil 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 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.

Respondent shall indicate that payment is in reference to P.Q. Docket No. 00-0012. The Hearing Clerk is directed to send copies of this Order to both addresses for Respondent as set forth in paragraph one of the Findings of Fact.

This Order shall have the same force and effect as if entered after a full hearing and shall be final and effective 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.

[This Decision and Order became final March 29, 2002.-Editor]

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