

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:

Kyzer Plants and Produce, Inc.,

Respondent

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LR
A.Q. Docket No. 08-0015

Consent Decision and Order

This proceeding was instituted under the Plant Protection Act (7 U.S.C. § 7701 et seq.)(the Act), by a complaint filed by the Administrator of the Animal and Plant Health Inspection Service alleging that the respondent violated the Act and regulations promulgated thereunder ((7 C.F.R. § 319.56 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, the 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 admits to the Findings of Fact set forth below.

The 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. Kyzer Plants and Produce, Inc., hereinafter referred to as the respondent, is a produce broker with a mailing address of 10 Market Plaza, North Little Rock, Arkansas 72231.
2. On or about November 20, 2002, one (1) carton of Mexican Hass avocados was sold to a Hispanic market in Little Rock, Arkansas.
3. On or about December 24, 2002, two (2) cartons of Mexican Hass avocados were sold to a Hispanic market in Little Rock, Arkansas.
4. On or about December 24, 2002, one (1) carton of Mexican Hass avocados was sold to a market in Little Rock, Arkansas.
5. On or about December 27, 2002, one (1) carton of Mexican Hass avocados was sold to a market in Little Rock, Arkansas.
6. On or about January 4, 2003, one (1) carton of Mexican Hass avocados was sold to a market in Little Rock, Arkansas.
7. On or about January 4, 2003, one (1) carton of Mexican Hass avocados was sold to a supermarket in Little Rock, Arkansas.
8. On or about January 13, 2003, two (2) cartons of Mexican Hass avocados were sold to a Hispanic market in Little Rock, Arkansas.

Conclusions

The respondent has admitted the jurisdictional facts and has agreed to the following order in disposition of this proceeding; therefore, this consent decision will be issued.

Order

The respondent, Kyzer Plants and Produce, Inc., is assessed a civil penalty of one thousand seven hundred and fifty dollars (\$1,750.00). The respondent shall send a certified check or money order for one thousand seven hundred and fifty dollars (\$1,750.00), payable to the Treasurer of the United States, 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.

This order shall become effective when served on the respondent.


KYZER PLANTS AND PRODUCE, INC.
Respondent


THOMAS N. BOLICK
Attorney for Complainant

Issued this 17th day of September, 2008
at Washington, D.C.


Administrative Law Judge