



Issue Date: May 11, 2022

Citation: *Kingbox Group Ltd. et al. v. Canada (Environment and Climate Change)*, 2022 EPTC 3

EPTC Case Nos.: 0013-2021, 0014-2021 and 0015-2021

Case Name: *Kingbox Group Ltd. et al. v. Canada (Environment and Climate Change)*

Applicants: Kingbox Group Ltd., 2707889 Ontario Limited and Zhenqiang Huang

Respondent: Minister of Environment and Climate Change Canada

Subject of proceeding: Review commenced under s. 15 of the *Environmental Violations Administrative Monetary Penalties Act*, S.C. 2009, c. 14, s. 126 (“EVAMPA”) of Administrative Monetary Penalties issued under s. 7 of EVAMPA for violations of s. 185(1)(b) of the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33.

Heard: April 11, 2022 (by teleconference)

Appearances:

Parties

Kingbox Group Ltd.
2707889 Ontario Limited
Zhenqiang Huang

Minister of Environment and
Climate Change Canada

Counsel/Representative

Zhenqiang Huang

Wendy Wright

DECISION DELIVERED BY:

LESLIE BELLOC-PINDER

Introduction

[1] On February 11, 2021, each of the three Applicants was issued a Notice of Violation alleging that they had contravened s. 185(1)(b) of the *Canadian Environmental Protection Act, 1999* (“CEPA”) for exporting used power supplies with circuit boards intact to Malaysia without a valid export permit.

[2] The Notices of Violation imposed monetary penalties pursuant to s. 10(1) of the *Environmental Violations Administrative Monetary Penalties Act* (“EVAMPA”). The two corporate Applicants were each ordered to pay \$2,000, and the individual Applicant (“Mr. Huang”) was ordered to pay \$400.

[3] Mr. Huang accepted service of all three Notices of Violation. During the initial stages of this proceeding, Mr. Huang represented himself and the corporate Applicants. The Applicants sought review of the Notices of Violation and invoked the jurisdiction of the Tribunal under EVAMPA.

[4] The facts giving rise to issuance of the Notices are not in dispute, and Mr. Huang readily admitted the violation of s. 185(1)(b) of CEPA occurred. On his, and the corporate Applicants’ behalf, Mr. Huang advised the Tribunal that they only take issue with the amount of the penalties and that Notices were issued to three parties for, essentially, one offence.

Analysis and Findings

Violations

[5] Mr. Huang conceded, on behalf of all Applicants, that a shipping container (Container SEGU4617216, hereinafter referred to as the “container”) exported from Canada contained illegal waste. Its intended destination was Malaysia. During transit shipment in Belgium, authorities determined that shipping documents declared the container was full of mixed metal scrap when, in fact, it contained used power supplies with circuit boards intact. The Belgian authorities ultimately refused to allow transit shipment on the basis that there was no transit shipment authorization in place for the movement of non-listed waste to Malaysia. The container was returned to the Port of Montreal in December 2020. Thereafter, it was sent to Toronto for inspection by Environment and Climate Change Canada (“ECCC”).

[6] Mr. Huang admitted that he exported the container, in his capacity as general manager for both Kingbox Group Ltd. and 2707899 Ontario Ltd. Both corporate Applicants were also listed as the exporter on documents associated with the shipment.

As a result, ECCC submits that all three Applicants committed the violation in issue pursuant to s. 8 of EVAMPA.

[7] Section 185(1)(b) of CEPA provides as follows:

185 (1) No person shall import, export or convey in transit a hazardous waste or hazardous recyclable material, or prescribed non-hazardous waste for final disposal, except...

(b) after **receiving from the Minister** whichever one of the following **permits** is applicable:

(i) an import permit or **export permit that**, except in the case of a permit issued under subsection (4), **states that the authorities of the country of destination** and, if applicable, of **the country of transit have authorized the movement**, and that the authorities of the jurisdiction of destination have authorized the final disposal or recycling of the waste or material, or

(ii) a transit permit that states that the Minister has authorized the movement...

[Emphasis added by the Respondent in its written submissions]

[8] The contents of the container fit the description of “hazardous recyclable materials” and, as a result, would have required an export permit to be sent to Malaysia. The Affidavit of the investigating officer for ECCC establishes the Applicants did not apply for or receive such a permit from ECCC.

[9] A pre-hearing conference was convened on July 22, 2021, to discuss the review process and answer Mr. Huang’s questions, among other things. During the conference, Mr. Huang acknowledged his role as General Manager for both companies, and that, while unintentional, violation of the above-noted section occurred. Mr. Huang’s primary concern was the amount of the sizeable fines levied against the companies, as well as the \$400 fine levied against himself personally. He wondered whether it was fair to be assessed a personal penalty when he was acting on behalf of the corporate Applicants who were also sanctioned. Counsel for the Minister (Respondent) acknowledged the issue and offered to engage in further “without prejudice” communication with Mr. Huang.

[10] Many months passed and neither the Tribunal nor Counsel for ECCC received communication from Mr. Huang. Ultimately, the review was set for a teleconference hearing to occur on April 11, 2022, and the Applicants were provided with notice of the hearing particulars sent to Mr. Huang via email and regular mail on March 7, 2022. The Tribunal had already established communication with Mr. Huang using the same email address to which he had responded in the past. No reply to the Tribunal’s email attaching

the Notice was received from Mr. Huang, but the Tribunal did not receive an error message or notification that the email was NOT delivered either. Further, the Notice sent by ordinary mail to Mr. Huang's address was not returned by Canada Post as "undeliverable". Given these events, the Tribunal deems that the Applicants received effective and proper notice that this hearing would be conducted by teleconference on April 11, 2022.

[11] Prior to the hearing, the Respondent filed an Affidavit from the investigating ECCC officer who issued the Notices of Violation and written submissions setting out the Minister's legal position. Counsel for the Minister appeared at the hearing, along with the officer who was prepared to explain or supplement his Affidavit evidence, if required. Mr. Huang did not appear, either on his own behalf, or for the two corporate Applicants. As a result, no evidence and no submissions were presented by the Applicants beyond their initial request for review filed shortly after the Notices of Violation were issued.

[12] The hearing was properly convened and began after confirming the Applicants had all received proper notice of the proceeding as described above. Counsel for the Minister briefly summarized her view of the evidence and prevailing law. It was not necessary to hear from the officer.

[13] The Tribunal agrees that the Minister's evidence is sufficient to satisfy its burden of proof that the violations occurred as set out in the Affidavit evidence filed herein, augmented by Mr. Huang's pre-hearing admission. Regarding the law, the Minister submitted the Tribunal does not have jurisdiction to review the ECCC officer's discretion to issue three Notices of Violations which give rise to this review. It is not necessary for the Tribunal to address or decide this question.

[14] If Mr. Huang had filed material, appeared at the hearing, and argued the issue, the Tribunal may have undertaken a deeper analysis of joint and/or several liability of three parties for a single occurrence which contravenes s. 185(1)(b) of CEPA as noted above. However, since none of the Applicants appeared at the hearing, the Minister's position, which was supported by the evidence and unopposed, prevails.

Penalty

[15] The formula for calculating the amount of an Administrative Monetary Penalty (“AMP”) issued under EVAMPA is found in ss. 4(1) of the *Environmental Violations Administrative Monetary Penalties Regulations* (“the Regulations”). In this case, all three Applicants were penalized at the applicable baseline AMP amount. The penalties were calculated correctly according to ss. 4 and 5 as Type B violations. Schedule 4 of the Regulations provides that the baseline penalty for an individual (Mr. Huang) for a Type B violation is \$400. The baseline penalty for corporations (“other persons”) which commit a Type B violation is \$2,000. The officer exercised his discretion and did not assess any additional amounts for aggravating factors which might have increased the penalty amounts.

[16] The Tribunal finds there are no calculation errors in the three AMPs, and therefore the Tribunal has no jurisdiction to adjust the assessed amounts in any of the Notices of Violation.

Conclusion

[17] The evidence establishes, on a balance of probabilities, that all three Applicants contravened s. 185(1)(b) of the CEPA when they exported the container in question without a permit. The Tribunal concludes that the Minister has demonstrated that a violation occurred, that the Applicant did not present any defence and that the resulting AMPs were correctly calculated. It follows that the requests for review must be dismissed.

Decision

[18] The requests for review are dismissed. Notices of Violation N8300-2429, N8300-2430 and N8300-2431 are upheld.

Review Dismissed

“Leslie Belloc-Pinder”
LESLIE BELLOC-PINDER
REVIEW OFFICER