

DEC 18 2000



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Mr. Miguel Angel Fajardo

individually and doing business as

Seguridad y Electronica MAFO, S.A.

with an address at

4 Calle, 15 y 16 Ave.
S.O. Barrio Suyapa #105
58-0081 San Pedro Sula
Honduras, C.A.

Dear Mr. Fajardo:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described in detail below, Miguel Angel Fajardo, individually and doing business as Seguridad y Electronica MAFO, S.A., (hereinafter collectively referred to as Fajardo), has violated the Export Administration Regulations (15 C.F.R. Parts 730-774 (2000)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 2000)) (the Act).²

Facts constituting violations:

CHARGES 1-2

On or about June 19, 1997, Fajardo exported shotguns from the United States to Honduras without obtaining from BXA the validated export license Fajardo knew or had reason to know was required by Section 742.7 of the Regulations. BXA alleges that, by transferring, transporting, or forwarding

¹ The alleged violations occurred in 1997. The Regulations governing the violations at issue are found in the 1997 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1997)).

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 Fed. Reg. 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 2000)) until November 13, 2000, when the Act was reauthorized by Pub. L. 106-508.



U.S.-origin commodities to be exported from the United States with knowledge or reason to know that a violation of the Act or any regulation, order, or license issued thereunder has occurred, is about to occur, or is intended to occur, Fajardo violated Section 764.2(e) of the Regulations. BXA also alleges that, by exporting a commodity to any person or destination or for any use in violation of or contrary to the terms, provisions, or conditions of the Act, or any regulation, order, or license issued thereunder, Fajardo violated Section 764.2(a) of the Regulations.

CHARGE 3

In connection with the export made on or about June 19, 1997, Fajardo **prepared** an air waybill, defined as an export control document in Part 772 of the Regulations, representing that the goods being shipped had no value. BXA alleges that, by making false or misleading representations, statements, or certifications directly or indirectly to a U.S. Government agency in connection with the preparation, submission, issuance, use or maintenance of an export control document, Fajardo committed one violation of Section 764.2(g) of the Regulations.

BXA alleges that Fajardo committed one violation of Section 764.2(a), one violation of Section 764.2(e), and one violation of Section 764.2(g), for a total of three violations of the Regulations.

Accordingly, Fajardo is hereby notified that an administrative proceeding is instituted against him pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000 per violation (see Section 764.3(a)(1) of the Regulations and 15 C.F.R. Section 6.4(a)(3) (2000));

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice before BXA (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If Fajardo fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

Fajardo is further notified that it is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with its answer, to be represented by counsel, and to seek a settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that -such services are required under the Regulations, in connection with the matters set forth in this letter. Accordingly,

Fajardo's answer should be filed with the U.S. Coast Guard **ALJ** Docketing Center, 40 S. Gay Street, Baltimore, Maryland 212024022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of Fajardo's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: C. Randall Pratt, Esq." below the address. Ms. Pratt may be contacted by telephone at (202) 482-5304.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Menefee". The signature is fluid and cursive, with the first name "Mark" and last name "Menefee" clearly distinguishable.

Mark D. Menefee
Director
Office of Export Enforcement

Enclosures

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:)
)
Miguel Angel Fajardo)
individually and doing business as)
Seguridad y Electronica MAFO, S.A.,)
)

Respondent)

Docket No. 00-BXA-10

REC'D
FEB 22 11 30
AJP/2/2000

RECOMMENDED DECISION AND ORDER

On December 18, 2000, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued a charging letter initiating this administrative proceeding against Miguel Angel Fajardo, individually and doing business as Seguridad y Electronica MAFO, S.A. (hereinafter referred to collectively as Fajardo). The charging letter alleged that Fajardo committed one violation of Section 764.2(a), one violation of Section 764.2(e), and one violation of Section 764.2(g) of the Regulations issued under the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 2000)) (the Act).¹

Specifically, the charging alleged that on or about June 19, 1997, Fajardo exported shotguns from the United States to Honduras without obtaining from BXA the validated export license Fajardo knew or had reason to know was required by Section 742.7 of the Regulations.

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), which had been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 Fed. Reg. 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 2000)) until November 13, 2000 when the Act was reauthorized. See Pub. L. No. 106-508.

BXA alleged that, by transferring, transporting, or forwarding U.S.-origin commodities to be exported from the United States with knowledge or reason to know that a violation of the Act or any regulation, order, or license issued thereunder has occurred, is about to occur, or is intended to occur, Fajardo violated Section 764.2(e) of the Regulations. BXA also alleged that, by exporting a commodity to any person or destination or for any use in violation of or contrary to the terms, provisions, or conditions of the Act, or any regulation, order, or license issued thereunder, Fajardo violated Section 764.2(a) of the Regulations.

The charging letter further alleged that, in connection with the export made on or about June 19, 1997, Fajardo prepared an air waybill, defined as an export control document in Part 772 of the Regulations, falsely representing that the goods being shipped had no value. BXA alleged that, by making false or misleading representations, statements, or certifications directly or indirectly to a U.S. Government agency in connection with the preparation, submission, issuance, use or maintenance of an export control document, Fajardo violated Section 764.2(g) of the Regulations.

Section 766.3(b)(1) of the Regulations provides that notice of issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at respondent's last known address. In accordance with that section, on December 18, 2000, BXA sent to Fajardo, at his address in Honduras, Central America, notice that it had issued a charging letter against him. BXA has established that delivery of the notice was made at that address by January 31, 2001. Fajardo's answer therefore was due on or before March 2, 2001. On February 28, 2001, pursuant to section 766.16 of the Regulations, the parties filed a Stipulated Extension of Time to Answer Charging Letter. On March 5, 2001, the

Administrative Law Judge (ALJ) issued an order granting an extension of time to answer the charging letter to March 23, 2001.

To date, Fajardo has not filed an answer to the charging letter nor did he seek to obtain a second extension of time to answer the charging letter before March 23, 2001. Accordingly, because Fajardo has not answered the charging letter as required by and in the manner set forth in Section 766.6 of the Regulations, Fajardo is in default.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, I therefore find the facts to be as alleged in the charging letter, and hereby determine that Fajardo committed one violation of Section 764.2(a), one violation of Section 764.2(e), and one violation of Section 764.2(g) of the Regulations.

Section 764.3 of the Regulations establishes the sanctions available to BXA for the violations charged in this default proceeding. The applicable sanctions as set forth in the Regulations are a civil monetary penalty and a denial of export privileges. See 15 C.F.R. § 764.3 (2000).

BXA's motion stated that an appropriate sanction for Fajardo's commission of three violations of the Regulations is imposition of a civil penalty of \$30,000 against Fajardo and issuance of a standard denial order to deny of all of Fajardo's export privileges for 20 years.² The Regulations require licenses for the export of shotguns to Honduras for foreign policy reasons. Fajardo knew or had reason to know that his export of shotguns to Honduras required a

² Denial orders can be either "standard" or "non-standard." A standard order denying export privileges is appropriate in this case. The terms of a standard denial order are set forth in Supplement No. 1 to Part 764 of the interim rule.

license, but proceeded to export them without a license, and falsely stated on an export control document that the shotguns had no value.

In light of the nature of the violations, I concur with BXA, and recommend that the Under Secretary for Export Administration enter an Order ³ against Miguel Fajardo, individually and doing business as Seguridad y Electronica MAFO, S.A., imposing a civil penalty of \$30,000 and denying all export privileges for a period of 20 years.

Dated: April 30, 2001

Edwin M. Bladen
Administrative Law Judge

³ Pursuant to Section 13(c)(1) of the Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases the Administrative Law Judge issues a recommended decision to the Under Secretary for Export Administration, who issues the final decision for the agency.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D . C . 20230

In the Matter of:)	
)	Docket No. 00-BXA- 10
Miguel Angel Fajardo)	
individually and doing business as)	
Seguridad y Electronica MAFO, S.A.,)	
)	
Respondent)	

DECISION AND ORDER

The Administrative Law Judge has entered a Recommended Decision and Order in the above-captioned matter. As provided by Section 766.22(c) of the Export Administration Regulations (15 C .F.R. Parts 730 - 774 (2000) (the "Regulations")), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401 - 2420 (1991 & Supp. 2000)) (the "Act")¹, the Recommended Decision and Order has been referred to me for final action. On December 18, 2000, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued a charging letter initiating this administrative proceeding against Miguel Angel Fajardo, individually and doing business as Seguridad y Electronica MAFO, S.A. (hereinafter referred to collectively as

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 9 17 (1995)), which had been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 *Fed. Reg.* 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 2000)) until November 13, 2000, when the Act was reauthorized. See Pub. L. No. 106-508.

“Fajardo”). The charging letter alleged that Fajardo committed three violations of the Regulations.

Specifically, the charging letter alleged that on or about June 19, 1997, Fajardo exported shotguns from the United States to Honduras without obtaining from BXA the validated export license that Fajardo knew or had reason to know was required by Section 742.7 of the Regulations. BXA alleged that, by transferring, transporting, or forwarding U.S.-origin commodities to be exported from the United States with knowledge or reason to know that a violation of the Act or any regulation, order, or license issued thereunder has occurred, is about to occur, or is intended to occur, Fajardo violated Section 764.2(e) of the Regulations. BXA also alleged that, by exporting a commodity to any person or destination or for any use in violation of or contrary to the terms, provisions, or conditions of the Act, or any regulation, order, or license issued thereunder, Fajardo violated Section 764.2(a) of the Regulations.

The charging letter further alleged that, in connection with the export made on or about June 19, 1997, Fajardo prepared an air waybill, defined as an export control document in Part 772 of the Regulations, falsely representing that the goods being shipped had no value. BXA alleged that, by making false or misleading representations, statements, or certifications directly or indirectly to a U.S. Government agency in connection with the preparation, submission, issuance, use, or maintenance of an export control document, Fajardo violated Section 764.2(g) of the Regulations.

The charging letter was served on Fajardo on January 31, 2001.² Fajardo’s answer

² The parties have stipulated that this was the date of service.

therefore was due on or before March 2, 2001. On February 28, 2001, pursuant to section 766.16 of the Regulations, the parties filed a Stipulated Extension of Time to Answer Charging Letter. On March 5, 2001, the Administrative Law Judge (“ALJ”) issued an order granting an extension of time to answer the charging letter to March 23, 2001.

Fajardo failed to answer the charging letter before March 23, 2001, as required by Section 766.6 of the Regulations. Pursuant to the default procedures set forth in Section 766.7 of the Regulations, BXA moved that the ALJ find the facts to be as alleged in the charging letter and render a Recommended Decision and Order.

Following BXA’s motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter served on Fajardo. The ALJ also found, based on those facts, that Fajardo violated Sections 764.2(a), 764.2(e), and 764.2(g) of the Regulations by exporting shotguns to Honduras without the authorization Fajardo knew or had reason to know was required by the Regulations, and by making false or misleading statements of material fact to a U.S. Government agency in connection with the preparation, submission, issuance, use, or maintenance of an export control document.

The ALJ also recommended that the appropriate penalty to be imposed against Fajardo for these violations is a civil penalty of \$30,000 and a denial, for a period of 20 years, of all of Fajardo’s privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving commodities, software, or technology exported or to be exported from the United States and subject to the Regulations.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the Administrative Law Judge.

ACCORDINGLY, IT IS THEREFORE ORDERED,

FIRST, that a civil penalty of \$30,000 is assessed against Fajardo, which shall be paid to the Department of Commerce within 30 days of the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1999)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice and, if payment is not made by the due date specified herein, respondent will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that, for a period of 20 years from the date of entry of this Order, Miguel Angel Fajardo, individually and doing business as Seguridad y Electronica MAFO, S.A. with an address at 4 Calle, 15 y 16 Ave., S.O. Barrio Suyapa #105, 58-0081 San Pedro Sula, Honduras, Central America, and all successors or assigns, officers, representatives, agents, and employees, may not participate, directly or indirectly, in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to

be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

- C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

FOURTH, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession, or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed, or controlled by the denied person, or service any item, of whatever origin, that is

owned, possessed, or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

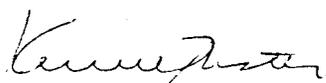
FIFTH, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Fajardo by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

SIXTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

SEVENTH, that a copy of this Order shall be served on Fajardo and on BXA, and shall be published in the Federal Register.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: 5/29/01



Kenneth I. Juster
Under Secretary for
Export Administration