E-558-1

UNITED STATES DEPARTMENT OF COMMERCE
UNDER SECRETARY FOR EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of: WILLIAM A. ROESSL, individually and formerly doing business as ENIGMA INDUSTRIES 145-B Crescent Beverly Hills, California 90202, Respondent	)

DECISION AND ORDER

On April 29, 1993, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued a charging letter initiating an administrative proceeding against William A. Roessl, individually and formerly doing business as Enigma Industries (hereinafter collectively referred to as "Roessl"). The charging letter alleged that Roessl committed three violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994)) (hereinafter the "Act").[2]

---

[1] The alleged violations occurred in 1989. The Regulations governing the violations at issue are found in the 1989 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1989)). Those Regulations define the violations that BXA alleges occurred, and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth in this decision and order.

[2] The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential

E-558-2

Specifically, the charging letter alleged that, on or about June 28, 1989, Roessl exported a U.S.-origin Floating Point Systems model 164 Array Processor from the United States through Canada to the Federal Republic of Germany without the validated license that Roessl knew or had reason to know was required by Section 772.1(b) of the former Regulations. BXA alleged that, by exporting commodities to any person or destination in violation of or contrary to the terms of the Act, or any regulation, order, or license issued under the Act, Roessl violated Section 787.6 of the former Regulations. BXA also alleged that, by selling, transferring, or forwarding 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 occurred, was about to occur, or was intended to occur, Roessl violated Section 787.4(a) of the former Regulations.

Furthermore, the charging letter also alleged that, in connection with the shipment described above, Roessl filed, directly or indirectly, with the U.S. Customs Service a Shipper's Export Declaration (SED) on which it was represented that the goods described thereon were being exported from the United States for ultimate destination in Canada when, in fact, as Roessl knew, the goods were not intended for ultimate destination

---

Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

in Canada. BXA alleged that, by making or causing the making of a false or misleading statement of material fact, directly or indirectly, to a United States agency in connection with the preparation, submission, or use of an SED, an export control document, Roessl violated Section 787.5(a) of the former Regulations.

BXA has presented evidence that the charging letter was served on Roessl on February 23, 1996.[3] After he was finally served, the parties agreed, by stipulation dated March 22, 1996, to an extension of time, until May 24, 1996, for Roessl to answer the charging letter. Roessl has failed to file an answer to the charging letter, as required by Section 766.7 of the Regulations, and is therefore in default. Thus, pursuant to Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge (hereinafter 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, and concluded that those facts constitute three violations of the former Regulations by Roessl, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for that violation is a denial, for a period of ten years, of all of Roessl's export privileges.

---

[3] The Recommended Decision and Order represents that BXA served the charging letter on April 29, 1993, when in fact, the charging letter was issued on that date and then served on February 23, 1996.

As provided by Section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action.

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 ALJ. As the ALJ noted, Roessl has been difficult to locate and has not cooperated with the resolution of this matter -- even after agency counsel agreed to an extension of time to file his answer to the charging letter. A civil monetary penalty would not likely be collected. Accordingly, a period of denial of Roessl's export privileges is a more effective and appropriate penalty.

Additionally, I agree with the ALJ that the period of denial of export privileges should be substantial. This case is aggravated both by Roessl's failure to participate in the administrative enforcement process and by the fact that the case involves an exportation through Canada. Under U.S. export control law, exports to Canada rarely require an export license. This important rule facilitates the substantial trade between the closely connected U.S. and Canadian economies. The license exception for Canada applies, however, only to goods intended for use in Canada. In this case, Roessl abused this exception. To abuse this exception is to risk losing it. A violation such as this is a serious matter and should receive a penalty that demonstrates that fact. The ALJ was correct in recommending the imposition of a ten-year period of denial of export privileges.

E-558-5

ACCORDINGLY, IT IS THEREFORE ORDERED,

FIRST, that, for a period of ten years from the date of this Order, William A. Roessl, individually and formerly doing business as Enigma Industries, 145-B Crescent, Beverly Hills, California 90202, and all his successors, assignees, officers, representatives, agents and employees, whenever acting within the scope of their employment with Roessl, may not, directly or indirectly, participate 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.

SECOND, 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

E-558-6

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.

THIRD, 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 the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

FOURTH, 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.

FIFTH, that this Order shall be served on Roessl 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: July 22, 1997

William A. Reinsch
Under Secretary for
Export Administration

E-558-7

UNITED STATES DEPARTMENT OF COMMERCE
OFFICE OF THE ADMINISTRATIVE LAW JUDGE
WASHINGTON, D.C. 20230

In the Matter of:

WILLIAM A. ROESSL,
individually and formerly doing business as
ENIGMA INDUSTRIES
145-B Crescent
Beverly Hills, California 90202,

Respondent

RECOMMENDED DECISION AND ORDER

On April 29, 1993, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued a charging letter initiating an administrative proceeding against William A. Roessl, individually and formerly doing business as Enigma Industries (hereinafter collectively referred to as "Roessl"). The charging letter alleged that Roessl committed three violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-

[1] The alleged violations occurred in 1989. The Regulations governing the violations at issue are found in the 1989 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1989)). Those Regulations define the violations that BXA alleges occurred, and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth in this default proceeding.

2420 (1991 & Supp. 1997)) (hereinafter the "Act").[2]

Specifically, the charging letter alleged that, on or about June 28, 1989, Roessl exported a U.S.-origin Floating Point Systems model 164 Array Processor from the United States through Canada to the then-Federal Republic of Germany without the validated license that Roessl knew or had reason to know was required by Section 772.1(b) of the former Regulations. BXA alleged that, by exporting commodities to any person or destination in violation of or contrary to the terms of the Act, or any regulation, order, or license issued under the Act, Roessl violated Section 787.6 of the former Regulations. BXA also alleged that, by selling, transferring, or forwarding 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 occurred, was about to occur, or was intended to occur, Roessl violated Section 787.4(a) of the former Regulations.

Furthermore, the charging letter also alleged that, in connection with the shipment described above, Roessl filed, directly or indirectly, with the U.S. Customs Service a Shipper's Export Declaration (SED) on which it was represented that the goods described thereon were being exported from the United

---

[2] The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)) and August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

States for ultimate destination in Canada when, in fact, as Roessl knew, the goods were not intended for ultimate destination in Canada. BXA alleged that, by making or causing the making of a false or misleading statement of material fact, directly or indirectly, to a United States agency in connection with the preparation, submission, or use of an SED, an export control document, Roessl violated Section 787.5(a) of the former Regulations.

BXA has presented evidence that the charging letter was served on Roessl on April 29, 1993. After he was finally served, the parties agreed, by stipulation dated March 22, 1996, to an extension of time, until May 24, 1996, for Roessl to answer the charging letter. Roessl has failed to file an answer to the charging letter, as required by Section 766.7 of the Regulations, and is therefore 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 Roessl violated Sections 787.4(a), 787.5(a) and 787.6 of the former Regulations. Because Roessl violated the Regulations by failing to obtain the required validated export license that he knew or had reason to know was required and made a false or misleading statement on an SED, BXA urges that I recommend to the Under Secretary for Export Administration[3] that all of Roessl's export

---

[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

privileges be denied for 10 years.

Moreover, BXA asserts that a 10-year denial period is the appropriate sanction for several reasons. First, the sanctions available to BXA for the violation charged in this proceeding are a civil monetary penalty and/or a denial of export privileges. In this case, BXA made several attempts to resolve the allegations against Roessl, who has been difficult to locate. In fact, he has changed his residency with great frequency, complicating any attempt to reach him, and generally appeared indifferent to the allegations against him. Overall, Roessl has not demonstrated a willingness to resolve this matter or that he would pay a civil penalty if one were to be imposed. Under these circumstances, the denial of all Roessl's export privileges is the appropriate sanction, because it is unlikely that he would ever pay a civil monetary penalty, rendering any judgment involving a civil monetary penalty meaningless.

Second, an appropriate sanction should be tailored to the severity of the violation. Given the fact that Roessl is charged with three violations of the former Regulations and that he apparently decided to ignore the law, a 10-year export denial, rather than any shorter denial period, is warranted.

Given the foregoing, I concur with BXA, and recommend that the Under Secretary for Export Administration enter an Order against William A. Roessl, individually and formerly doing

---

which is reviewed by the Under Secretary for Export Administration who issues the final decision for the agency.

E-558-11

business as Enigma Industries, denying all of his export privileges for a period of 10 years.[4]

Accordingly, I am referring my recommended decision and order to the Under Secretary for review and final action for the agency. As provided by § 766.17(b)(2) of the Regulations, I am serving the recommended decision on the parties by overnight carrier. Because the Under Secretary must review the decision in a short time frame, all papers filed by the parties in response to my recommended decision and order must be sent by personal delivery, facsimile, express mail or other overnight carrier, as provided in § 766.22(a) of the Regulations. Submissions by the parties involved in the proceedings must be filed with the Under Secretary for Export Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Room 3898B, Washington, D.C., 20230, within 12 days from the date of issuance of this recommended decision and order. Parties thereafter have eight days from receipt of any response(s) in which to submit replies.

Within 30 days after receipt of this recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order. See § 766.22(c) of the Regulations.

Dated: 6/18/97

Administrative Law Judge

---

[4] 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.

E-558-12

UNITED STATES DEPARTMENT OF
COMMERCE
NEWS
WASHINGTON, D.C. 20230

BUREAU OF
EXPORT
ADMINISTRATION

FOR IMMEDIATE RELEASE:
July 23, 1997
internet: www.bxa.doc.gov
BXA-97-27

CONTACTS: Eugene Cottilli
Susan Hofer
(202) 482-2721

DENIAL OF EXPORT PRIVILEGES IMPOSED AGAINST BEVERLY HILLS BUSINESSMAN BY COMMERCE UNDER SECRETARY

WASHINGTON --- The Commerce Department's Under Secretary for Export Administration, William A. Reinsch, has adopted the recommendation of an Administrative Law Judge and denied export privileges of William A. Roessl of Beverly Hills, CA. for 10 years. The penalty resulted from Reinsch's finding that Roessl, doing business as Enigma Industries, had committed three violations of the Export Administration Act when he shipped equipment from the United States through Canada to the Federal Republic of Germany without the required export license.

Reinsch noted that under U.S. export control law, exports to Canada intended for use there rarely require an export license, in order to facilitate the substantial trade between the two countries. But he added, "in this case, Roessl abused this exception. To abuse this exception is to risk losing it. A violation such as this is a serious matter and should receive a penalty that demonstrates that fact. The ALJ was correct in recommending the imposition of a ten-year period of denial of export privileges," Reinsch wrote.

Reinsch also pointed to the ALJ's assertion that "Roessl has been difficult to locate and has not cooperated with the resolution of this matter."

"A civil monetary penalty would not likely be collected. Accordingly, a period of denial of Roessl's export privileges is a more effective and appropriate penalty," Reinsch said.

The Export Administration Regulations provide that administrative enforcement proceedings be conducted by an Administrative Law Judge who recommends an appropriate resolution of the case to the Under Secretary for Export Administration. The Under Secretary may affirm, modify or vacate the ALJ's recommendation. In this case, Reinsch adopted the findings and penalty recommended by the ALJ.

Under Secretary Reinsch's order will be published in the *Federal Register*.

-30-

E-558-13

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

APR 29 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. William A. Roessl,
individually and formerly doing business as
Enigma Industries
145-B Crescent
Beverly Hills, California 90202

Dear Mr. Roessl:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), hereby charges that William A. Roessl, individually and formerly doing business as Enigma Industries (hereinafter collectively referred to as Roessl), has violated Sections 787.4(a), 787.5(a) and 787.6 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768-799 (1992)) (the Regulations),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991, Supp. 1992, and Pub. L. No. 103-10)) (the Act), as set forth below.

Facts constituting violations:

CHARGES 1-2

On or about June 28, 1989, Roessl exported a U.S.-origin Floating Point Systems model 164 Array Processor from the United States through Canada to the then-Federal Republic of Germany without the validated license that Roessl knew or had reason to know was required by Section 772.1(b) of the Regulations. By selling, transferring, or forwarding 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, Roessl violated Section 787.4(a) of the Regulations. By exporting commodities to any person or destination in violation of or contrary to the terms of the Act, or any regulation, order, or license issued under the Act, Roessl violated Section 787.6 of the Regulations.

---

[1] The Regulations governing the violations at issue are found in the 1989 version of the Code of Federal Regulations. Those Regulations are codified at 15 C.F.R. Parts 768-799 (1989) and, to the degree to which they pertain to this matter, are substantially the same as the 1992 version.

E-558-14

CHARGE 3

In connection with the shipment described above in Charges 1-2, Roessl filed, directly or indirectly, with the U.S. Customs Service a Shipper's Export Declaration (SED) on which it was represented that the goods described thereon were being exported from the United States for ultimate destination in Canada. In fact, as Roessl knew, the goods were not intended for ultimate destination in Canada. By making or causing the making of a false or misleading statement of material fact, directly or indirectly, to a United States agency in connection with the preparation, submission, or use of an SED, an export control document, Roessl violated Section 787.5(a) of the Regulations.

The Department alleges that Roessl committed one violation of Section 787.4(a), one violation of Section 787.5(a), and one violation of Section 787.6, for a total of three violations of the Regulations, each of which involves commodities controlled for reasons of national security under Section 5 of the Act.

Accordingly, Roessl is hereby notified that an administrative proceeding is instituted against him pursuant to Section 13(c) of the Act and Part 788 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions, including any or all of the following:

Revocation of validated export licenses under Section 788.3(a)(1);

General denial of export privileges under Section 788.3(a)(2);

Exclusion from practice under Section 788.3(a)(3); and/or

Imposition of the maximum civil penalty allowed by law of $10,000 per violation or, for a violation of national security controls, $100,000 per violation, under Section 788.3(a)(4).

A copy of Parts 787 and 788 of the Regulations is enclosed.

If Roessl fails to answer the charges contained in this letter within 30 days after service as provided in Section 788.7 of the Regulations, that failure will be treated as a default under Section 788.8.

Roessl is further notified that he is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 788.7 of the Regulations, if a written demand for one is filed with his answer, to be represented by counsel, and to seek a consent settlement.

E-558-15

Roessl's answer should be filed with the Office of the Administrative Law Judge/Export Control, U.S. Department of Commerce, Room H-4017, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, in accordance with the instructions in Section 788.6 of the Regulations. In addition, a copy of Roessl's answer should be served on the Department at the address set forth in Section 788.6, adding "ATTENTION: Thomas C. Barbour, Esq." below the address. Please note that the room number for the Department is H-3839. Mr. Barbour may be contacted by telephone at (202) 482-5311.

Sincerely,

Frank W. Deliberti
Director
Office of Export Enforcement

Enclosure