



June 24, 2011

File: 44200-50/TMB #11-05

DELIVERED BY E-MAIL

Rod Lacey
Ladybug Manor
6475- 264 St
Aldergrove BC V4W 1M5

Robert P. Hrabinsky
Affleck Hira Burgoyne LLP
700 – 570 Granville Street
Vancouver BC V6C 3P1

LADYBUG MANOR v BC TURKEY MARKETING BOARD

On May 20, 2011, the BC Farm Industry Review Board (BCFIRB) received an appeal filed by the appellant, Rod Lacey, DBA Ladybug Manor. The appeal is from a decision of the BC Turkey Marketing Board made April 8, 2011 cancelling Ladybug Manor's turkey broker license following a Turkey Board hearing of the same date which the appellant chose not to attend.

The Turkey Board's April 8 decision ordered a 10-day suspension of the appellant's broker license effective the date the decision was communicated to Ladybug Manor (April 11, 2011). The suspension was a result of the appellant not paying a grower – in accordance with the Turkey Board's General Orders and Regulations – for product received by Ladybug Manor. The April 8 decision further ordered the cancellation of the appellant's broker license if the grower was not paid within the 10-day suspension period.

On June 2, 2011, BCFIRB advised the appellant that as his appeal was not filed within the 30 days required under section 24(1) of the *Administrative Tribunals Act* (i.e., not later than May 9, 2011), he would need to demonstrate that special circumstances exist that would warrant extending the time to file an appeal. The appellant and Turkey Board were given an opportunity to make submissions on this issue.

The following submissions were received from the parties:

- June 10, 2011 from the appellant;
- June 14, 2011 response from counsel for the Turkey Board; and
- June 20, 2011 reply from the appellant.

Appellant's Out of Time Submission

The appellant submitted that the time period for filing his appeal should be extended because the Turkey Board never advised him of his right of appeal or the 30-day time limit; he was not aware of BCFIRB's potential dispute resolution role; and it took time for him to research Government

British Columbia
Farm Industry Review Board

Mailing Address:
PO Box 9129 Stn Prov Govt
Victoria BC V8W 9B5
Telephone: 250 356-8945
Facsimile: 250 356-5131

Location:
780 Blanshard St
Victoria BC V8W 2H1
Email: firb@gov.bc.ca
Website: www.firb.gov.bc.ca

website information to identify BCFIRB, query BCFIRB staff and receive advice on filing an appeal.

Turkey Board Response and Application for Summary Dismissal on Other Grounds

In response, the Turkey Board argues that the appellant was aware of his right of appeal at least as early as May 4, 2011, when Mr. Lacey noted in an email of that date that he was “getting in touch with the BCIFRB (sic) to help settle this”. The Turkey Board says that there is a “complete absence of any “special circumstances” as might warrant extending the time for filing an appeal.”

The Turkey Board further argues that there are compelling reasons for not extending the time period. Arrangements have been made to ship the grower’s production elsewhere and “creating doubts” about the Turkey Board’s decision after the expiry of the time period would result in an “intolerable degree of uncertainty” and “will almost certainly result in lost opportunities to move forward with, and to restructure, the B.C. organic turkey industry.”

The Turkey Board further submits that the appeal should also be dismissed summarily as being frivolous, vexatious and trivial and giving rise to abuse of process. The Turkey Board argues that the appellant’s real reason for not paying the grower is the absence of a “utility price” in the Turkey Board’s General Orders. Given that “all must abide by the law until such time as the law changes” and there is “no prospect” of BCFIRB issuing a “retroactive decree” to change pricing orders as they previously existed, the appeal could also be dismissed on the grounds that there is no prospect of the appeal succeeding.

Appellant’s Reply

In reply, the appellant states that he needed more than 30 days because of his work schedule, as well as for the reasons outlined in his original submission. He says that the appeal could well have been filed in time if the Turkey Board had been “up front that their decision was appealable, with instruction on how to proceed.” As for the argument, that extending the time for appeal creates uncertainty, the appellant submits that the Turkey Board’s unreasonable pricing structure is what leads to “uncertainty” in the BC organic turkey industry. The cancellation of Ladybug Manor’s license also creates uncertainty for the appellant. Further, the appellant argues that in making its decision to cancel the license, the Turkey Board did not deal with Ladybug Manor’s concerns about pricing and product quality “appropriately or fairly”.

In response to the other grounds for summary dismissal, the appellant says that his appeal is not frivolous as it raises the issue of requiring brokers to pay top price for product of little or no value. The appellant submits that the Turkey Board made an unfair and biased decision without taking into consideration all the issues and how such matters had been addressed in the past. As for the argument that the appeal has no prospect of success, the appellant argues that good judgement and common sense favour his appeal.

Decision

I have carefully reviewed all the submissions. In my view, the cancellation of a person's license to do business is a serious matter. In this case, the Turkey Board, having made a decision of considerable consequence to Ladybug Manor, failed to fairly, transparently and accountably notify the appellant in a timely fashion of his right of appeal, including the 30-day filing period. I find that the Turkey Board is overstating matters when it attempts to rely on the appellant's May 4 email as proof that he knew of his appeal rights including the time limit for filing an appeal. While I recognize the Turkey Board's interest in maintaining certainty around its decision making, in the absence of a clear statement of appeal rights, I am reluctant to deprive the appellant of his right to appeal a decision of such consequence simply because the appellant missed the appeal deadline by 12 days.

With respect to the Turkey Board's application for summary dismissal on other grounds, I note that the *Natural Products Marketing (BC) Act* ("NPMA") gives persons "aggrieved by or dissatisfied with an order, decision or determination" of a commodity board a broad right of appeal to BCFIRB. This right of appeal is an important component of BCFIRB's statutory mandate to provide for the "general supervision" of commodity boards such as the Turkey Board by allowing persons to bring concerns and issues to the attention of the Provincial supervisory agency. Given this broad right of appeal, I find that the Turkey Board has not demonstrated a basis for summary dismissal and I can draw no conclusions on the prospect of success of this appeal. Whether the appeal is upheld or dismissed will be a decision of an appeal panel following a hearing on its merits.

I note also BCFIRB's discretion to address issues identified in appeals under s. 8 of the *NPMA* where an appeal panel, if it considers it appropriate, may refer a matter to BCFIRB in its supervisory capacity or under s. 8(9), following a hearing: "(a) make an order, confirming, reversing or varying the order, decision or determination under appeal; (b) refer the matter back to the marketing board or commission with or without directions; (c) make another order it considers appropriate in the circumstances."

Accordingly, I find that there are special circumstances sufficient to warrant extending the period for filing this appeal and dismiss the Turkey Board's other grounds for summary dismissal.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Ron Bertrand, Panel Chair