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IN THE MATTER OF THE NATURAL PRODUCTS  
MARKETING (BC) ACT

AND

IN THE MATTER OF AN APPEAL TO THE  
BRITISH COLUMBIA MARKETING BOARD  
FROM A DECISION OF THE BRITISH COLUMBIA CHICKEN MARKETING BOARD  
DATED MAY 20, 1987 TO CANCEL A PREVIOUSLY APPROVED TRANSFER OF QUOTA

BETWEEN:

SUNDANCE INVESTMENTS LTD. AND R62 ENTERPRISES LTD.

APPELLANTS

AND:

BRITISH COLUMBIA CHICKEN MARKETING BOARD

RESPONDENT

REASONS FOR DECISION

Appearances: Sundance Investments Ltd. and R62 Enterprises Ltd.  
J. L. Duignan, Legal Counsel  
N. Krumbhols, Sundance Investments Ltd.

APPELLANT

British Columbia Chicken Marketing Board  
J. J. L. Hunter, Legal Counsel  
D. Sendall, Chairman,  
P. Hunt, Member  
A. Stafford, Manager

RESPONDENT

1. The matter before the British Columbia Marketing Board ("the Board") is an appeal by Sundance Investments Ltd. and R62 Enterprises Ltd. against a decision of the British Columbia Chicken Marketing Board ("the Chicken Board") dated May 20, 1987 to cancel a previously approved transfer of quota.
2. The Appeal was filed with the Board on June 19, 1987 and was heard in Richmond, British Columbia on September 23, 1987.
3. The Appellants and Respondent were represented by Counsel and were permitted to present witnesses and make oral submissions on the facts and the law.
4. The facts revealed at the hearing of this appeal are as follows:
  - a) Mr. Norman Krumbhols, in partnership with a Mr. Ernie Janzen, acquired a Roaster Quota in March, 1981. In response to incentives offered by the Chicken Board to encourage the relocation of Roaster Quota from the Fraser Valley to the Okanagan, Mssrs. Krumbhols and Janzen relocated their farm operations to a 75 acre parcel of land in Oyama, B.C. Their Roaster Quota was converted to a 15,000 bird Broiler Quota equivalent and they received 5,000 bird Class B. Quota. In July 1986, Mr. Janzen's interest in the partnership was sold to Paul Krumbhols, the adult son of Mr. Norman Krumbhols.
  - b) On December 16, 1986, Mr. Norman Krumbhols met with the Chicken Board to discuss the separation of the Krumbhols/Krumbhols partnership to create two separate farms on Lot 1 and Lot 2 of the property of Oyama prior to December 31, 1986, in order that each farm unit would receive a 5,000 bird secondary quota issued under Regulation 1 M 186-1986. The Chicken Board approved the separation on the specific conditions 1. that Paul Krumbhols was a registered grower prior to December 31, 1986, and 2. that new buildings were erected on Lot 2 prior to the end of 1987. The Chicken Board approved the transfer of a 7,500 bird Broiler Quota and the issue of 5,000 bird Secondary Quota to Norm Krumbhol's company, Sundance Investments Ltd. attached to Lot 2, and the transfer of a 7,500 bird Broiler Quota and the issue of 5,000 bird Secondary Quota to Paul Krumbhol's company R62 Enterprises Ltd. attached to Lot 1.
  - c) In March, 1987 the Chicken Board was advised that new buildings had not been constructed on Lot 2 as required, but that the existing building on Lot 1 had been increased by 40 feet. On March 4, 1987, Mr. Norman Krumbhols met with the Chicken Board and stated that he was in the process of subdividing the land and building by Strata Title with Lot 1 to be attached to the top floor and Lot 2 attached to the bottom floor. On March 19, 1987, following another meeting with Mr. Norman Krumbhols, the Chicken Board revoked the transfer of the 7,500 broiler quota to R62 Enterprises Ltd. and cancelled the issue of 5,000 bird secondary quota to R62 Enterprises Ltd. as the specific conditions attaching to the separation of the original farm were not fulfilled.



- d) On June 11, 1987 Sundance Investments Ltd. and R62 Enterprises Ltd. appealed to the Board against the decision of the Chicken Board to cancel the transfer of quota as set out in the letter from the Chicken Board dated May 20, 1987.
  - e) Effective August 1, 1987 the Chicken Board passed an amendment to its regulations specifically excluding dual ownership of a single production unit by way of strata title.
5. The Appellants state that:
- a) Mr. Norman Krumbhols and Mrs. Elfreida Krumbhols are shareholders in Sundance Investments Ltd. which operates a broiler farm on Talbot Road in Oyama.
  - b) R62 Enterprises Ltd. is a company owned by Paul Krumbhols.
  - c) Pada Holdings Ltd. is a company owned by the Krumbhols family in which all members of the family hold voting shares.
  - d) Pada Holdings Ltd. and Mrs. Elfreida Krumbhols own one-half of Lot 1, Section 36, Township 20, Osoyoos Division, Yale District, respectively, being the property where the barns for the broiler operation are located.
  - e) Pada Holdings Ltd. and Mr. Norman Krumbhols own one-half of Lot 2, Section 36, Township 20, Osoyoos Division, Yale District, respectively, being a parcel of land adjoining Lot 1.
  - f) It was Norman Krumbhols understanding that Paul Krumbhols met the requirement of being a registered owner by virtue of his ownership of shares in Pada Holdings Ltd.
  - g) On successful completion of the application for strata title of the property, ownership of Lot 1 would be transferred from Pada Holdings Ltd. and Elfreida Krumbhols to Paul Krumbhols.
  - h) That Norman Krumbhols was aware that the Chicken Board interpreted its regulations as requiring separate buildings, but that it was his understanding that the scope of the regulations would also permit a strata title registration.
  - i) Norman Krumbhols was aware of one operation in the Turkey industry and two operations in the egg industry where two separate quotas were attached to the same property and building.
6. The Appellants assert that the cancellation of the previously approved transfer of quota by the Chicken Board was ultra vires to the Act and Regulations of the Chicken Board.
7. The Appellants further assert that the amendment passed by the Chicken Board effective August 1, 1987 which prohibits ownership by way of strata title should not apply to Sundance Investments Ltd. and R62 Enterprises Ltd. should their application for strata title be approved.



8. The Appellants request that in the event that the appeal is not upheld by the Board, that the Board vary the decision of the Chicken Board to permit that the Broiler Quota registered from R62 Enterprises and Sundance Investment Ltd. be transferred to a partnership of R62 Enterprises and Sundance Investment Ltd. effective December 18, 1986.
9. The Respondent states that:
  - a) The application to transfer quota to R62 Enterprises Ltd. and Sundance Investments Ltd. was approved on the specific conditions 1. that Paul Krumbhols become the registered grower prior to December 31, 1986 and that 2. separate facilities would be constructed on Lot 2 to house the new operation, by the end of 1987.
  - b) The Chicken Board acted within its authority when setting the conditions for the transfer of quota to R62 Enterprises and Sundance Investment Ltd., and when it revoked its approval following noncompliance.
  - c) The Chicken Board approved several applications in 1986 under the same conditions and all the other growers had complied with the conditions.
  - d) Upon confirmation from Mr. Norman Krumbhols that he did not intend to meet the conditions specified by the Chicken Board for the transfer of quota, the Chicken Board revoked the transfer of quota to R62 Enterprises Ltd. and cancelled the issue of secondary quota to R62 Enterprises Ltd.
  - e) The the long established requirement of separate land and separate buildings is well known in the chicken industry and that the Appellants were advised of the requirement before and during his attempts to file for strata title.
  - f) The amendment to the Chicken Board's regulations prohibiting registration by strata title was issued only as a clarification of the Chicken Board's long standing quota policy, and was not intended to inhibit the Appellants or to influence the appeal process.
10. Following the hearing of the Appeal the Board accepted and considered supplementary submissions filed by the Appellants and the Respondent on the issue of other operations in the chicken industry where two quotas were attached to the same land or buildings.

From these submissions the Board found that there was no evidence to suggest that there were other operations in the chicken industry similar to that undertaken by the Appellants.
11. Section 4.01 (c.1) of the British Columbia Chicken Marketing Scheme (1961) states that the Chicken Board has the power "to establish, issue, permit transfer, revoke or reduce quotas to any person as the board in its discretion may determine from time to time, whether or not the same

are in use, and to establish the terms and conditions of issue, revocation, reduction and transfer of quotas, such quotas to remain at all times the exclusive property of the board, which shall not attach any monetary value thereto;"

12. The Board finds that:

- a) In accordance with the above-noted section, the Chicken Board acted within its authority when it approved the transfer of quota under set conditions and in revoking its approval when the specific conditions attaching to the separation of the original farm unit were not met.
- b) All similar cases were handled by the Chicken Board in the same manner and the Appellants were treated in a fair and consistent manner.
- c) The Appellants were aware of the requirement that there be separate buildings, although he did not agree with the requirement.
- d) The strata title concept would appear to be in direct conflict with the established quota policy; and in view of the health and safety concerns discussed by the Chicken Board there seems to be reasonable grounds for such a policy.
- e) Of consequence is the fact that as of the date of the appeal, the application for strata title had not been approved, and the registered owner of the land was, in fact, Pada Holdings and not R62 Enterprises Ltd. It cannot be the purpose of this decision to visualize events which may or may not take place, but rather to determine judgment on established facts.

13. Section 11(7) of the Natural Products Marketing (BC) Act provides that "the Provincial Board may, on an appeal under this section, dismiss the appeal, or confirm or vary the order, decision or other determination of the marketing board or commission on the terms and conditions it considers appropriate." Therefore, the Board finds in favour of the Respondent, but orders the Chicken Board to permit a partnership of Sundance Investments Ltd. and R62 Enterprises Ltd. effective December 18, 1986.

14. In accordance with its Rules of Appeal, the Board orders the forfeiture of the deposit by the Appellants.

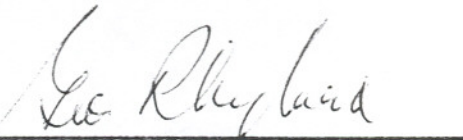
Dated this *19th* day of January, 1988 in Richmond, British Columbia




  
C. E. Emery, Chairman

  
E. M. Brun, Vice Chairperson

  
O. Austring, Member

  
G. Aylard, Member

  
J. Reger, Member