

99-18
8/25/99

IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT
AND
FROM A DECISION OF THE
BRITISH COLUMBIA EGG MARKETING BOARD
TO SEIZE A FLOCK (Seizure Receipt No. 7141999)

BETWEEN:

BILL POTTRUFF
(d.b.a. POTTRUFF ENTERPRISES)

APPELLANTS

AND

BRITISH COLUMBIA EGG MARKETING BOARD

RESPONDENT

**DECISION
APPLICATION FOR STAY**

APPEARANCES: (Via written submissions)

For the British Columbia Marketing Board

Ross Husdon, Board Chair
Karen Webster, Member
Hamish Bruce, Member

For the Appellant
Pottruff Enterprises

Mr. Bill Pottruff

For the Respondent

Mr. Peter Whitlock

Introduction

1. These reasons address an application by the Appellant, Bill Pottruff of Pottruff Enterprises ("Pottruff"), that the British Columbia Marketing Board ("BCMB") stay the British Columbia Egg Marketing Board ("Egg Board") flock seizure notice #7141999 pending the conclusion of the appeal hearing proceedings between the Appellant and the Egg Board. This application proceeded in writing.
2. The Appellant is an egg producer.

Arguments

3. The Appellant's grounds for the stay application are outlined in correspondence dated July 27, 1999, as supplemented in a letter dated August 17, 1999. The July 27, 1999 letter outlines the Appellant's circumstances, and his objections to the Egg Board's conduct. The August 17, 1999 letter states as follows:

"In addition to providing the preceding issues, I was asked to provide any further comments supporting my request for the BCMB to grant a stay. At the present time I do not recognize any credibility or good will on the part of the Egg Board. I do not trust that the Egg Board will respect its own stay and therefore would like a stay from the BCMB for my protection pending the outcome to this issue. I would also like my July 27th letter to stand as justification for the stay."

4. The Egg Board does not object to a stay being granted by the BCMB on the basis that there is already one in place. It refers to its July 29, 1999 letter to the Appellant which states:

"First let me address the issue of a "stay". The Board will not act on its seizure notice as long as "due process" is progressing. This includes the hearing process and possible appeal or court process."

Decision

5. A stay is an extraordinary order and is a matter of discretion. It will not be issued unnecessarily. It does not follow that a stay will be granted merely because a respondent "does not object" to the application. An appellant seeking to have the BCMB stay or suspend an order, decision or action of a commodity board must demonstrate that the appeal is not frivolous, that he would suffer irreparable harm if a stay is not granted, and that such harm outweighs the harm to the respondent and the public interest if a stay is granted.

6. While the Appellant has met the first element of the test, he has not demonstrated that he will suffer irreparable harm if the stay is not granted.
7. The Egg Board has specifically undertaken that it will not act on the seizure notice while this appeal is pending. It has stayed any action on its own notice. The "seized" flock remains with the Appellant. As matters stand at present, there is nothing for the BCMB to "stay". The Appellant's argument in response is that he does not trust the Egg Board. Be that as it may, the Appellant has given the BCMB no evidence upon which we may assume that the Respondent will not honour its commitment.
10. The Appellant is free to renew his application if he obtains evidence that the Egg Board intends to act on the seizure notice. We would fully expect that the Egg Board would not take such action without giving the Appellant reasonable prior notice.
11. The application for a stay is denied.
12. Finally, the BCMB advises the parties that this appeal ought to proceed expeditiously and be scheduled as soon as reasonably possible.

Dated at Victoria, British Columbia, this 25th day of August 1999.

BRITISH COLUMBIA MARKETING BOARD

Per



Ross Husdon, Chair



Karen Webster, Member



Hamish Bruce, Member