



File: 44200-50/EMB 01-05

May 25, 2001

DELIVERED BY FAX AND REGISTERED MAIL

Mr. Rolf Van Nuys
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Mr. Peter Whitlock
General Manager
British Columbia Egg Marketing Board
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Abbotsford, BC V2S 4P2

Dear Sirs:

**AN APPEAL OF A DECISION, AS COMMUNICATED IN A LETTER DATED
JANUARY 17, 2001, CONCERNING THE ALLOCATION OF TRLQ PRODUCTION**

By letter dated May 9, 2001, the Panel of the British Columbia Marketing Board (the "BCMB") released its decision with respect to the application by the British Columbia Egg Marketing Board (the "Egg Board") to dismiss the appeal as being filed out of time.

The submissions of Mr. Rolf Van Nuys, on behalf of the Appellant Mrs. Marilyn Van Nuys of Van Nuys Farms, did not deal with the time period from the date of release of the Egg Board decision on January 17, 2001 until the expiry of the 30 day period. Rather, the submissions dealt with the reason for the delay after that time. In our earlier decision we held:

The Panel understands that Mr. Van Nuys mailed the Notice of Appeal to the BCMB's old address. Had we been able to find that the appeal had been mailed before the expiration of the 30-day time period, we would likely have found special circumstances existed to warrant an extension of the time for filing an appeal. However, based on the information before the Panel, there is nothing to explain the delay in filing the appeal within 30 days of January 17, 2001. The only explanation offered is for the mailing delay that occurred after the expiration of the 30-day time limit.

Given the foregoing, the Panel finds that this appeal was filed out-of-time.

British Columbia
Marketing Board

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However, the Appellant was given a further opportunity to address the reasons for the delay in not mailing the appeal notice until Saturday, February 17, 2001:

As the Panel does not have any other information before it to explain the reason for the delay in filing, we can not consider whether any special circumstances exist to justify an extension of the time for filing this appeal. Accordingly, the Appellant is to provide the Panel with any further submissions with respect to special circumstances on or before May 14, 2001. It should be noted however that such special circumstances do not extend to the delay between February 17 and March 5, 2001. Rather they must go to show why an appeal was not filed within 30 days as set out by the *Act*.

The Panel has received and reviewed the following further correspondence:

- May 14, 2001 letter from Mr. Van Nuys; and
- May 18, 2001 letter from Mr. Peter Whitlock, General Manager of the Egg Board.

DECISION

Section 8(1) of the *Natural Products Marketing (BC) Act* (the “*Act*”) requires an aggrieved or dissatisfied person to appeal an order, decision or determination of a commodity board by servicing written notice on the BCMB within 30 days after receiving notice of the order, decision or determination. Section 8(2)(b) of the *Act* states that the prescribed \$100 filing fee must accompany this written notice.

In this case, notice was not received by the BCMB within 30 days of the Appellant receiving notice of the decision. Instead, the BCMB received the notice required by the *Act* on March 5, 2001. As the Notice of Appeal was mistakenly mailed to the BCMB’s old address, the Appellant has a reasonable excuse to explain the delay from the date the Notice of Appeal was mailed until its receipt by the BCMB on March 5. As set out in our earlier decision, had the appeal been mailed within 30 days, the mailing error would likely have been special circumstances justifying an extension in the time for filing.

However, the appeal was mailed on Saturday, February 17, 2001, 31 days after the Appellant received notice of the Egg Board’s decision on January 17, 2001. In his further submission, Mr. Van Nuys explains why he was unable to mail the appeal on February 16, 2001. However, nothing in his submission explains why he was unable to serve the BCMB with notice of his appeal within 30 days after receiving notice of the Egg Board’s decision as required by the *Act*. In order for the appeal to be received in time, it would have had to be mailed or couriered well in advance of February 16, 2001.

Limitation periods cannot be lightly set aside. The Legislature felt it was appropriate to impose certain deadlines in the *Act* on the time for filing an appeal. A likely reason for such a limitation period is that effective regulation of the industry requires some certainty in commodity board decisions. If an appeal could be filed at any time, a commodity board's decision-making ability could be seriously undermined.

Under s. 8(1)(b) of the *Act*, the BCMB has the discretion to provide an extension of the time for filing an appeal where we find that special circumstances warrant it. In this case, we have no evidence of any special circumstances explaining the reason for the delay in filing the appeal after February 16, 2001. Accordingly, we are unable to exercise our discretion under s. 8(1)(b).

ORDER

The appeal is dismissed.

RIGHT OF APPEAL

If a person, marketing board or commission is aggrieved or dissatisfied by an order or referral of the BCMB under section 9(1) of the *Act*, the person, marketing board or commission may appeal the order or referral on a question of law to the Supreme Court if the appeal is commenced within 30 days of being served with a copy of the order or referral.

BRITISH COLUMBIA MARKETING BOARD

Per

(Original signed by):

Christine Elsaesser, Vice Chair