



File: 44200-50/EMB 01-05

May 9, 2001

DELIVERED BY FAX

Mr. Rolf Van Nuys
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RR 2, 40650 #5 Road
Abbotsford, BC V3G 2S5

Mr. Peter Whitlock
General Manager
British Columbia Egg Marketing Board
PO Box 310
2669 Deacon Street
Abbotsford, BC V2S 4P2

Dear Sirs:

**AN APPEAL OF A DECISION, AS COMMUNICATED IN A LETTER DATED
JANUARY 17, 2001, CONCERNING THE ALLOCATION OF TEMPORARY
RESTRICTED LICENCE QUOTA PRODUCTION**

By letter dated January 17, 2001, the British Columbia Egg Marketing Board (the "Egg Board") offered Mrs. Marilyn Van Nuys first option to accept Temporary Restricted Licence Quota, with the proviso that this production be produced on Vancouver Island.

By letter dated February 15, 2001 and mailed on February 17, 2001 to the office of the British Columbia Marketing Board (the "BCMB"), Mr. Rolf Van Nuys notified the BCMB of the appeal. As Mr. Van Nuys mailed the Notice of Appeal to the BCMB's old address, the letter was returned to him. As such, the BCMB did not receive the Notice of Appeal and filing fee of \$100 until March 5, 2001.

By letter dated April 12, 2001, Mr. Peter Whitlock, General Manager of the Egg Board, raised the issue that this appeal was brought well outside the 30 days imposed by the *Natural Products Marketing (BC) Act* (the "Act"). The letter states that the Egg Board "needs to know that the 30 day appeal period has meaning as there are often decisions that have to be made and actions taken once the 30 day period has past and the ability to appeal is no longer a factor. These decisions can involve the payment of funds or signing of contracts".

British Columbia
Marketing Board

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The BCMB Panel deciding this application has received and reviewed the following correspondence related to the Egg Board's application:

- January 17, 2001 letter from the Egg Board to Mrs. Van Nuys;
- February 15, 2001 Notice of Appeal and envelope date stamped March 5, 2001 and the original envelope with a Canada Post date stamp of February 17, 2001;
- Pre-hearing conference report dated April 12, 2001;
- April 12, 2001 letter from the Mr. Whitlock;
- April 21, 2001 letter from Mr. Van Nuys; and
- April 25, 2001 letter from Mr. Whitlock.

The Egg Board takes the position that the Appellant's appeal was filed outside the 30-day time limit imposed by s. 8(1)(a) of the *Act* and as such, should be dismissed. The Appellant argues that the appeal was filed within the 30 days required in the *Act*. Unfortunately, the Notice of Appeal was sent to the BCMB's old address and subsequently returned. Mr. Van Nuys put the returned envelope (unopened) in a new envelope and re-sent it to the BCMB office. Mr. Van Nuys notified both Mr. Jim Collins of the BCMB staff and Mr. Whitlock of the Egg Board of the delay.

DECISION

In s. 8(1), the *Act* requires an aggrieved or dissatisfied person to appeal an order, decision or determination of a commodity board by serving written notice on the BCMB within 30 days after receiving notice of the order, decision or determination. A notice under s. 8(1) must contain a statement of the matter being appealed, the name and address of the person bringing the appeal and the name and address of the commodity board or commission being appealed from [s. 8(2)(a)]. In addition, the prescribed fee of \$100 must also accompany a Notice of Appeal [s. 8(2)(b)].

It is clear Mr. and Mrs. Van Nuys were unhappy with the Egg Board's decision that they received by fax on January 17, 2001. The BCMB has record of conversations with Mr. Van Nuys after receipt of the January 17 decision and before the expiry of the 30-day appeal period on February 16, 2001. However, despite being familiar with appeals before the BCMB, having appealed a prior order of the Egg Board in 1999, and despite being aware of the out-of-time issue as it was an issue in the earlier appeal, the Van Nuys did not pursue their appeal in accordance with the time requirements under the *Act*.

The BCMB did not receive any Notice of Appeal from the Van Nuys prior to the expiry of the 30-day time period on February 16, 2001. A fax was received sometime over the weekend, after the close of business on Friday, February 16, 2001 and before Sunday, February 18, 2001 when it was date stamped. However, the fax copy of the Notice of Appeal was incomplete as it did not contain the prescribed fee and it was received outside the 30-day time period.

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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 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.

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 Egg Board will have an opportunity to respond to the Appellant's submissions. In the absence of any further submissions, the appeal will be dismissed.

BRITISH COLUMBIA MARKETING BOARD

Per

(Original signed by):

Christine Elsaesser, Vice Chair