

ISSUES

- A. The Appellant disputes the finding of bootlegging and the subsequent penalties made by the British Columbia Mushroom Marketing Board February 8, 1995.
- B. The Appellant seeks an Order for costs.
- C. The Respondent seeks an Order for costs.

FACTS

1. The Mushroom Marketing Board (the "Mushroom Board") began surveillance on SK Mushroom Farm located at 99184 162nd Street, Surrey, B.C. in the spring of 1994 as a result of a tip that there was bootlegging activity on the farm. The surveillance attempts were largely unsuccessful until January 31, 1995.
2. On January 31, 1995, Mr. Jack Sharpe of the Mushroom Board observed a vehicle with licence JDB 540 belonging to Thanh Ban Mai enter the SK Farm. The occupant of the vehicle proceeded to load 10 six pound boxes of mushrooms.
3. The vehicle left the farm and travelled to the Sun Fruit and Vegetable Market on Fraser Highway and 152nd Street in Surrey.
4. The driver unloaded 5 boxes and took them into store. Mr. Sharpe asked the driver to show proof of purchase but he was unable to do so.
5. The Appellant, Mr. Pang, did not call any evidence to refute the testimony of Mr. Sharpe.
6. The Appellant, Mr. Pang, is the secretary of SK Mushroom Farm Ltd.
7. SK Mushroom Farm Ltd. is the registered owner of the property located at 99184 - 162nd Street, Surrey, B.C.
8. My Tran Hua operating as P&T Hua Mushroom Farm is the lessee of the subject mushroom farm and has been so since 1993.
9. The lease for the mushroom farm was renewed for a further two year period on June 25, 1995.

10. It is a term of the lease that:

"(1) The lessee agrees to abide all pertinent rules and regulations of the B.C. Mushroom Marketing Board, the Fraser Valley Mushroom Growers Cooperative Association, the Workers' Compensation Board and all other government agencies and specifically agrees not to make any off-sales of mushrooms, but to deal only through the B.C. Mushroom Marketing Board...

(11) The lessee agrees to pay a security deposit of \$40,000 payable upon execution of this lease. The damage security deposit shall be refundable in full to the lessee on the termination of this lease provided that there has been no breach of this agreement and the property and equipment are left in the same condition in which they are obtained, subject to reasonable wear and tear. The security deposit may be applied in whole or in part reasonably towards any damages sustained by the lessor, without prejudice to the right of the lessor to proceed against the lessee for any deficiency in the deposit."

DECISION

This panel finds that the Mushroom Board has proven a prima facie case of bootlegging occurring on the subject mushroom farm on January 31, 1991.

In defence, Mr. Pang states that there was a lease between him and My Tran Hua. It is his position that although he was the registered owner of the mushroom farm, he was not aware of what went on at that property nor should he be held responsible for the activities of his tenant. It is his evidence that his tenants have denied being involved in bootlegging activity. The tenant was not called to give evidence at this hearing.

Money's Mushrooms, a designated agency, requires all mushrooms shipped through their agency to be shipped in the name of the registered owner of the mushroom farm. In addition, Money's issues cheques in the name of the registered owner. Further, it is the registered owner who holds the license.

The B.C. Mushroom Scheme gives the Mushroom Board power to seize and dispose of regulated product which is transported or marketed in violation of any order of the Board. In addition, General Orders specifically prohibit a grower from selling or supplying regulated product unless he or she is currently registered with the Board. In addition, no grower can sell, supply or deliver regulated product to any person other than an agency or such person an agency may direct or the Board may authorize.

Given that SK Mushroom Farm Ltd. holds the license for the subject mushroom farm and given that an instance of bootlegging has been found to occur at that mushroom farm, the B.C.M.B. upholds the decision of the Mushroom Board of February 8, 1995 to penalize SK Mushroom Farm Ltd. for bootlegging activity.

APPROPRIATENESS OF PENALTY

Given that the B.C.M.B. accepts that an instance of bootlegging occurred on January 31, 1995, the issue of the appropriateness of the penalty arises. Mr. Pang did not submit any evidence as to the appropriateness of the penalty. It was his opinion that it was unfair that he had to pay an increased license fee of \$500 and a levy of \$16,850 when he was not at fault for the bootlegging. The levy of \$16,850 is calculated as follows:

1. Surveillance costs up to the date of January 31, 1995	\$13,434.15
2. Mushroom Board Hearings	\$ 2,110.00
3. Legal advice	\$ 1,500.00
Total:	\$17,044.15

Given that the decision in this matter was rendered prior to receipt of all bills an assessment of \$16,850 was levied plus a Class 2 license - \$500 for a total of \$17,350.

After reviewing the evidence the B.C.M.B. is not prepared to set aside either charge.

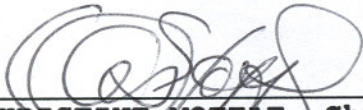
FINDINGS

Accordingly, the Appeal is dismissed.

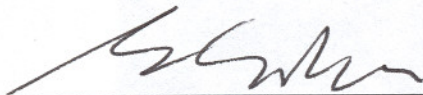
COSTS

The B.C.M.B. dismisses both parties claim for costs.

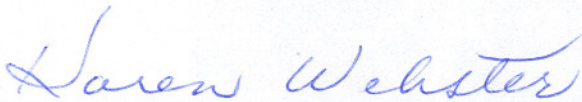
Dated at Victoria, British Columbia this ^{22nd} day of February, 1996



CHRISTINE MOFFAT, Chairperson
British Columbia Marketing Board



GURMIT BRAR, Member
British Columbia Marketing Board



KAREN WEBSTER, Member
British Columbia Marketing Board