

IN THE MATTER OF THE
NATURAL PRODUCTS MARKETING (BC) ACT
AND
IN THE MATTER OF AN APPEAL
FROM DECISIONS
CONCERNING THE TRANSFER OF QUOTA

BETWEEN:

WESTVIEW POULTRY FARMS LTD.

APPELLANT

AND:

BRITISH COLUMBIA TURKEY MARKETING BOARD

RESPONDENT

**REASONS FOR DECISION
APPLICATION TO DISMISS**

APPEARANCES

(by written submission)

For the British Columbia Marketing Board

Ms. Christine Elsaesser, Vice Chair
Ms. Karen Webster, Member
Ms. Doreen Hadland, Member

For the Appellant

Mr. Harry P. Froese

For the Respondent

Mr. Colyn K. Welsh, Secretary-
Manager

INTRODUCTION

1. The British Columbia Turkey Marketing Board (the “Turkey Board”) raised two preliminary issues in this appeal. The first is whether the appeal filed by Westview Poultry Farms Ltd. (“Westview”) was outside the 30-day time period prescribed by the *Natural Products Marketing (BC) Act* (the “Act”). The second preliminary issue is whether the appeal should be dismissed as being frivolous, vexatious or trivial pursuant to s. 8(8.3) of the *Act*.
2. By letter dated May 31, 2000, Mr. Harry Froese on behalf of the Appellant wrote to the Turkey Board and advised of Westview’s intention to appeal several decisions of the Turkey Board. Mr. Froese also requested copies of all quota transfers approved by the Turkey Board over the prior 12-month period.
3. Although unclear from the May 31 letter, the Appellant was taking issue with the following two quota transfers:
 - a) Ralin Holdings Inc. on April 20, 2000; and
 - b) #576336 BC Ltd. on January 6, 2000.
4. The Turkey Board provided the Appellant with information on these transfers and a copy of its General Orders on June 2, 2000.
5. Mr. Froese was contacted by the Chair of the Turkey Board, Mr. Shawn Heppell, who advised that the two transfers had been approved in principle but were not yet complete. In this discussion, Mr. Froese agreed to meet with the Turkey Board to review the Appellant’s concerns. This meeting occurred on June 22, 2000.
6. At this meeting, Mr. Froese raised the issue of the 30-day time period for filing an appeal with the British Columbia Marketing Board (the “BCMB”). Mr. Froese recalls being advised by Mr. Colyn Welsh, Secretary-Manager of the Turkey Board, that the BCMB never enforces this rule. Mr. Froese decided to attempt to resolve the Appellant’s concerns with the Turkey Board “in house” rather than proceed with an appeal.
7. As Mr. Froese did not hear back from the Turkey Board following his meeting as he had requested, on November 14, 2000 he wrote to the Turkey Board asking for a response to the Appellant’s concerns. On November 20, 2000, the “secretary” responded by saying the Turkey Board could not remember the concerns.
8. By letter dated February 8, 2001, the Appellant filed its Notice of Appeal with the BCMB.

ISSUES

9. Should the appeal be dismissed as it was filed outside the 30-day time limit prescribed by s. 8(1)(a) of the *Act*.
10. Should the appeal be dismissed, pursuant to s. 8(8.3) of the *Act*, as being frivolous, vexatious or trivial?

ARGUMENT OF THE RESPONDENT

11. The Respondent argues that the present appeal was filed outside the 30-day time limit prescribed by s. 8(1)(a) of the *Act*. In fact, the delay amounts to almost 10 months for the first transfer and more than 13 months for the second. The Appellant was aware of the transfers and the General Orders by June 2, 2000, if not earlier. If the Appellant had concerns with the transfers, it should have filed its appeal by July 22, 2000 at the latest, 30 days after Mr. Froese met with the Turkey Board.
12. The Respondent argues that as the Appellant did not file its appeal within the 30 days set out in s. 8(1)(a) and as there are no special circumstances under s. 8(1)(b) to warrant an extension of over six months, the appeal should be dismissed.
13. In the alternative, the Turkey Board argues that if special circumstances do exist to justify extending the time for filing an appeal, the appeal should be dismissed pursuant to s. 8(8.3) as being frivolous, vexatious or trivial.
14. The Turkey Board argues that it is dealing with the concerns raised by the Appellant in June 2000 and as such this appeal is frivolous.

ARGUMENT OF THE APPELLANT

15. Mr. Froese on behalf of the Appellant argues that his May 31, 2000 letter to the Turkey Board made it clear that Westview intended to appeal several decisions of the Turkey Board. After the Chair of the Turkey Board contacted him and informed him that the transfers were approved in principle but not complete, and after his June 22 meeting with the Turkey Board, Mr. Froese thought that the Appellant's concerns were being dealt with.
16. The Appellant decided to deal with its concerns "in house" rather than taking them to the BCMB. Mr. Froese argues that as this was done at the request of the Turkey Board, it is unfair for the Turkey Board to now use the delay in filing an appeal against the Appellant.
17. In addition, Mr. Froese argues that the actual date when the 30-day appeal began to run is unclear in this case. Given that both transfers had conditions imposed, and given that the Appellant does not know if or when those conditions were met, it can not say when the transfers actually completed. In these circumstances, Mr. Froese argues that the time for filing the appeal should be extended.

18. With respect to the application to dismiss the appeal as being frivolous pursuant to s. 8 (8.3), the Appellant argues that this is a very serious appeal. Both transfers under appeal were completely contrary to the Turkey Board's own orders and both transfers involve Turkey Board members. The Appellant argues that there appears to be one set of rules for the growers on the Turkey Board and one set for the rest of the growers. This should be a serious concern.
19. Further, the Appellant argues that the Turkey Board's suggestion that it is changing the General Orders now should not have any effect on the BCMB's investigation of past mistakes.
20. Finally, the Appellant cautions that the extensive changes to the General Orders proposed by the Turkey Board have been done without consultation and as such will lead to further appeals to the BCMB.

DECISION

Out of Time Issue

21. The Respondent argues that no special circumstances exist to warrant an extension of the time for filing an appeal. Between 10 and 13 months passed before the Appellant filed its appeal. Six months passed from the time the Appellant was provided with the necessary information regarding the transfer decisions until it filed an appeal.
22. The Appellant points to several reasons for its delay in commencing this appeal. The Appellant was advised in June 2000 that these transfers were not final and were only approved in principle. In addition, the Turkey Board requested that the Appellant delay filing its appeal in order to allow the Turkey Board to negotiate a resolution. The Appellant received advice from the Turkey Board Secretary-Manager that the 30-day requirement was not enforced by the BCMB.
23. The Panel accepts the chronology of events set out by Mr. Froese in his February 24, 2001 submission. The Turkey Board did not take exception to any of the information in Mr. Froese's submission although given an opportunity to do so. From this submission, it appears that in May 2000, the Appellant very clearly set out its intention to appeal certain decisions of the Turkey Board. The Turkey Board chose to enter into negotiations with the Appellant in an attempt to resolve its concerns and the Appellant believed that the 30-day requirement to file an appeal was not enforced by the BCMB. This explains much of the Appellant's delay in filing its appeal.
24. Once the Appellant saw that the Turkey Board was not taking its concerns seriously, it commenced the appeal. Although no explanation is offered by the Appellant to explain the delay from November 20, 2000 to February 8, 2001, the fact that this appeal raises issues regarding the propriety and transparency of the conduct of the Turkey Board warrants an extension in the time for filing an appeal.

Frivolous, Vexatious or Trivial Appeal Issue

25. Section 8(8.3) was enacted in December 1999. The purpose of this amendment was to grant the BCMB the authority to dismiss an appeal on the application of a party where that appeal was “frivolous, vexatious or trivial”. This power can only be exercised in limited situations, where it is clear on its face that an appeal cannot possibly succeed or that it is devoid of merit.
26. In this case, the Turkey Board argues that the appeal is frivolous as the Turkey Board is “addressing the concerns raised by Mr. Froese last June”. This statement falls far short of what must be established in order for this Panel to deprive aggrieved or dissatisfied parties of their right to appeal.
27. The very fact that the Appellant proceeded with its appeal in February 2001 is indicative of its dissatisfaction with the actions of the Turkey Board in addressing the concerns raised in June 2000. The fact that the Turkey Board is taking action as a result of the concerns raised by the Appellant cannot deprive the Appellant of its right of appeal. This is especially so where it is clear that the Appellant is not satisfied with the Turkey Board’s handling of its concerns up to the present time.

ORDER

28. The Respondent’s application, pursuant to ss. 8(1)(a) and (b), that the appeal is out-of-time is dismissed.
29. The Respondent’s application, pursuant to s. 8(8.3), that the appeal is frivolous, vexatious or trivial is dismissed.

Dated at Victoria, British Columbia this 28th day of March, 2001.

BRITISH COLUMBIA MARKETING BOARD

Per

(Original signed by):

Christine Elsaesser, Vice Chair
Karen Webster, Member
Doreen Hadland, Member