

March 15, 2019

DELIVERED BY E-MAIL

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Cc: Robert P. Hrabinsky

Dear Sirs:

RE: 2019 Feb 28 Prokam Thomas Fresh. v BCVMC - Decision

In its decision dated February 28, 2019, the BCFIRB made the following orders:

1. Commission orders 48.3 and 48.5 are referred back to the Commission to reconsider, with directions to consider all relevant facts and all relevant provisions of the General Orders, other than the asserted violation of the minimum pricing requirements in respect of the interprovincial sales.

48.3 - The Class 1 Producer Licence issued to Prokam is to be revoked and replaced with a Class 4 Licence. The Commission may choose to replace this licence with a Class 3 or Class 5 licence on review of the producer's compliance with these orders.

48.5 - The Class 1 Wholesaler Licence issued to Thomas Fresh is to be revoked and replaced with a Class 4 Licence.

2. The Commission is directed to reconsider its decision to issue order 48.1.

48.1 - Effective February 1, 2018, BCfresh is the designated Agency for Prokam. Prokam is to sign a GMA with BCfresh under the Agency's standard terms.

3. **Prior to undertaking reconsideration pursuant to orders 1, 2 and 4, the Commission is directed to canvass the parties' views on the question of whether any members of the Commission must recuse themselves from the discussions and deliberations concerning the reconsideration.**
4. The Commission is directed to reconsider the question of whether any compliance or remedial action is necessary in relation to IVCA.
5. The Commission is directed to review its minimum pricing policy documentation to ensure that it is properly documented and integrated as appropriate with its General Orders.

The primary purpose of this letter is to solicit the views of IVCA, Prokam and Thomas Fresh concerning the composition of a Commission panel to be struck for the purpose of reconsidering the matters described in the BCFIRB's orders 1, 2 and 4. We propose a panel comprised of the following members: John Newell, Eric Schlacht, Mike Reed, Brent Royal (newly elected Commissioner representing peppers). None of these persons ship to, or are

shareholders, directors or officers of, BCfresh. Please let us have your comments with respect to the proposed panel no later than March 29th, 2019.

As an incident to the above, we wish to briefly address the Commission's decision to revoke the Class 1 Wholesaler Licence issued to Thomas Fresh and replace it with a Class 4 Licence. In that regard, it must be noted that the BCFIRB made the following finding at paragraph 35 of its decision:

The Commission did not have the authority to apply its minimum pricing rules to these interprovincial sales, or to issue any related cease and desist orders respecting such sales. We reach this conclusion because the Commission has not complied with the federal Statutory Instruments Act, a step that is required for the Commission to be able to avail itself of the interprovincial price setting authority that is provided by the federal Agricultural Products Marketing Act and the British Columbia Vegetable Order.

The basis for the Commission's decision with respect to the licence issued to Thomas Fresh was summarized by the Commission as follows:

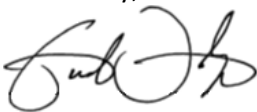
47. Thomas Fresh's wholesale licence class is to be adjusted to reflect its disregard to orderly marketing of BC regulated vegetables. Thomas Fresh had entered into a contract to directly purchase regulated product with an un-licensed producer. This is in direct violation of the general order and the conditions attached to a wholesaler licence. The Commission is also satisfied that Thomas Fresh played a significant role in the marketing of regulated product at below the minimum price established by the Commission.

The BCFIRB made no findings with respect to whether Thomas Fresh had "entered into a contract to directly purchase regulated product with an un-licensed producer". Nevertheless, it must be acknowledged that the Commission's main concern was the role that Thomas Fresh played "in the marketing of regulated product at below the minimum price". Given that the BCFIRB has ruled that the Commission did not have the authority to apply its minimum pricing rules to these interprovincial sales, I am prepared to recommend to the Commission that the licence issued to Thomas Fresh immediately revert back to a Class 1 Licence without further consideration by the Commission. If this is acceptable to Thomas Fresh, I will require written confirmation that the Commission may so act without further consideration, and without first obtaining views concerning the composition of a Commission panel to be struck for the purpose of reconsidering the matters described in the BCFIRB's orders. In the absence of such written consent, reconsideration of the licence class for Thomas Fresh will have to wait until a panel is struck, and the matter is duly reconsidered.

For the balance of the matters to be addressed as directed by the BCFIRB, the Commission will begin its engagement with the parties after a Commission panel has been struck.

Thank you.

Yours truly,



Andre Solymosi
General Manager