

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

**IN THE MATTER OF A
SPECIAL CIRCUMSTANCES APPLICATION BY
KARL HANN**

DECISION

November 17, 2009

INTRODUCTION

1. In connection with the British Columbia Farm Industry Review Board (BCFIRB) consideration of the New Entrant Program Rules recently submitted for approval by the British Columbia Egg Marketing Board, Karl Hann has requested that BCFIRB direct the Egg Board to allot 5000 layers of quota to him because of his special circumstances.

BACKGROUND

2. Mr. Hann has been carrying on business as an organic egg producer and also operating an egg grading station as Biota Farm.
3. He had previously applied to the Egg Board in January 2007 to become a registered quota holder. The Egg Board denied his request. He appealed that decision to BCFIRB but his appeal was denied. See *Karl Hann d.b.a. Biota Farm* (December 7, 2007).

SUBMISSIONS

4. Mr. Hann seeks “a permit for 5000 specialty hens” and asks for consideration of his application even though “it may appear unrelated to the topic ‘new producer’” because “I, Karl Hann, am not considered a new producer by the BCEMB”.
5. Mr. Hann states that following the above noted appeal he submitted another application to the Egg Board but it was in vain because according to the Egg Board a person not in compliance with the orders of the board cannot apply for a permit.
6. Mr. Hann submits that it makes perfect sense to him to have a new producer program but asks what about others like him who have unregistered flocks.
7. The Egg Board relies on the BCFIRB 2007 *Hann* decision and submits that it is bound by that decision.

ANALYSIS

8. The panel has reviewed all submissions and accompanying materials respecting Mr. Hann’s application.
9. The panel has reviewed the 2007 *Hann* decision and agrees the parties to that decision are bound by it.
10. In that decision, as in this application, Mr. Hann asked that BCFIRB direct that the Egg Board allocate him a licence, quota or permit sufficient to cover his unregistered egg production. Alternatively he requested that he be exempted from the requirement to be registered with the Egg Board so that he would no longer be

considered to be an “illegal producer”. His requests were denied, the panel in that case finding:

62. We agree with the Egg Board’s submissions that there are no “special circumstances” warranting a departure from the Standing Order in Mr. Hann’s case. The fact that Mr. Hann chose for his stated reasons not to make application for TRLQ in 2000 is not in our view a special circumstance that supports exemption from the Standing Order. If he wished to be treated like other permittees he could have applied at that time. He did not.
 63. We also observe that from September 2006 on Mr. Hann was clearly aware that there was another possible route for him to take to regularize his situation by completing and submitting the new entrant application form, together with the required fee, for the new entrant program.
 64. Indeed, in requesting that he be recognized as an independent producer of eggs, Mr. Hann appears to prefer that we create a tailor-made solution for him. His preference is that we permit him to operate as a “free agent” so to speak and thus regularize his situation, allowing him to increase his production to whatever level the market will support while at the same time reducing the fees and levies he will pay because he does not agree with them or portions of them. He wants to be part of the system but not be bound by it. He is, in essence, still negotiating for that better deal.
 65. We are not prepared to exempt Mr. Hann from some or all of the Standing Order requirements applicable to him as a producer and grader. Quota is a finite resource. To exempt Mr. Hann as he requests would be to rank him ahead of others who are acting in compliance with the Egg Board’s Standing Order and to, in effect, rewrite the ranking system. For this reason his request to be treated either as a “de facto” permittee for conversion purposes or as a “free agent” cannot succeed.
 66. As for Mr. Hann’s desire to have the benefits of the system without being part of it, this is simply not workable. Nor is it equitable. There cannot be free agents in a supply management system if it is to remain functional and continue to operate.
 67. Mr. Hann is correct that the September 2005 Report contemplates the integration of specialty producers like him into the orderly marketing system. Through the September 2005 Report directions and the consequent changes to the Egg Board’s Standing Order, a means has been provided for those outside the system to gain entry to the system through the new entrant program. It is Mr. Hann’s choice as to whether he wishes to proceed to regularize his situation by making application for quota as a new entrant and by bringing his operations into compliance with the Standing Order requirements respecting reporting of production and payment of levies.
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69. Finally, we consider it necessary to make it clear that Mr. Hann’s status is not a matter for further negotiation through BCFIRB as he appeared to indicate during the course of the hearing might be the next step. BCFIRB’s directions with regard to specialty production and new entrants are those set out in the September 2005 Report and BCFIRB’s supplementary direction letters of January and May 2007. These directions, after further consideration by each board as to the specific circumstances of each industry, have now been implemented through approved changes to the orders and regulations of each board. These orders and regulations

are now binding on producers. Producers must now deal with their respective boards under the terms of their orders and regulations. The course of action that now remains open to Mr. Hann is to proceed in accordance with the Egg Board's Standing Order to regularize his situation to the extent possible.

11. We find Mr. Hann has not put forward any special circumstances outside the circumstances already considered in the *Hann* decision. There is no basis to conclude that he should be treated differently than any other new entrant applicant.

DECISION

12. Mr. Hann's request that BCFIRB direct the Egg Board to allot 5000 layers of quota to him is denied.

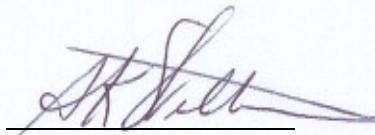
Dated at Victoria, British Columbia, this 17th day of November 2009.



Sandi Ulmi
Vice Chair



Ron Bertrand
Member



Suzanne K. Wiltshire
Member