

COMMONWEALTH OF PENNSYLVANIA
MILK BOARD

COMMONWEALTH OF PENNSYLVANIA, :
MILK BOARD :
 :
v. : LEGAL DOCKET NOS CA-23-012
 : CA-23-015
OAK SHADE CHEESE LLC :
LICENSE NO. 100000186, :
Defendant :

ORDER

I. FINDINGS OF FACT

1. On November 1, 2023, the Pennsylvania Milk Marketing Board (Board) held a hearing to consider evidence and testimony to determine whether cause existed to suspend or revoke Defendant's milk dealer's license.
2. On September 20, 2023, Board Staff issued citation CA-23-012 to Defendant, alleging that Defendant violated section 143.12 of the Board Regulations (7 Pa. Code § 143.12) and section 626.5 of the Pennsylvania Milk Producers' Security Act by failing to make advance and final payments to Dairy Farmers of America (DFA) and Pioneer Milk Producers Cooperative (Pioneer) on or before the dates due for such payments for milk purchased in the months of April 2023, May 2023, and June 2023.
3. On September 20, 2023, Board Staff issued citation CA-23-015 to Defendant, alleging that Defendant violated section 143.12 of the Board Regulations (7 Pa. Code § 143.12) and section 626.5 of the Pennsylvania Milk Producers' Security Act by failing to make advance and final payments to Pioneer Milk Producers Cooperative on or before the dates due for such payments for milk purchased in July 2023.
4. Steven Zalman testified on behalf of Board Staff. Mr. Zalman is the Board's Enforcement Director. Mr. Zalman testified that the Board employee assigned to audit Defendant, Forrest Carlough, discovered that Oak Shade had made the late producer payments which are the subject of the two citations. Mr. Zalman testified that Mr. Carlough conducted an exit interview with Defendant to discuss his audit findings. Mr. Carlough forwarded the information to Mr. Zalman at which point Mr. Zalman processed a legal referral. The Board's Staff Attorney then issued the two citations.
5. Mr. Zalman recommended Defendant's license be suspended for 26 days or, in the alternative, the Board accept a \$150.00 per day penalty payment in lieu of the suspension as provided in the Milk Marketing Law. Mr. Zalman testified that the 26-day

recommendation was based on the late payments subject of the citations plus additional late payments in August 2023 and September 2023.

6. Based on the late payments subject of the citations Mr. Zalman recommended a 20-day suspension or the Board accepting \$150.00 per day in lieu of the suspension.
7. Israel Kissinger testified on behalf of Defendant. Mr. Kissinger testified that there was one late payment to DFA, which he characterized as a "mishap." Mr. Kissinger testified that he has a COD/bond waiver agreement with Pioneer, so he assumed that Pioneer was accepting the risk of not receiving payment.
8. Mr. Kissinger also testified that Pioneer offered milk in excess of what Defendant was originally taking. Mr. Kissinger accepted it because he was building inventory, contingent on being able to pay when he had funds available, as he did not have the funds at the time to make timely payments.
9. Mr. Kissinger acknowledged being familiar with Board requirements regarding timing and amount of payments to producers. He also acknowledged that the payments subject of the citations were made late.
10. Menno Beiler testified. Mr. Beiler is a Pioneer employee. Mr. Beiler testified that "[i]t was a lot of my fault that this started."
11. The Board finds that Defendant did not pay all amounts due to DFA and Pioneer, on or before the due dates for those payments, for milk received in the months of April 2023, May 2023, June 2023, and July 2023.
12. The Board finds that sufficient credible evidence was provided to allow the Board to conclude that Defendant's milk dealer license should be revoked for failing to account and make payment for milk received from DFA and Pioneer from April 2023 through July 2023.
13. The Board finds that sufficient credible evidence was provided to allow the Board to conclude that Defendant's milk dealer license should be suspended for failing to account and make payment for milk received from DFA and Pioneer from April 2023 through July 2023.
14. Late payments for milk received by Defendant in August 2023 and September 2023 were not the subject of this hearing.

II. CONCLUSIONS OF LAW

1. Defendant received at least five days' notice of the hearing held on November 1, 2023.

2. Defendant violated section 143.12 of the Regulations of the Board (7 Pa. Code § 143.12) in that it did not make timely payments for milk received during the months of April 2023, May 2023, June 2023, and July 2023.
3. The evidence presented to the Board was sufficient to conclude that Defendant's milk dealer license should be revoked. However, the Board concludes that it is not in the best interests of the Pennsylvania dairy industry to revoke Defendant's milk dealer license.
4. The evidence presented to the Board was sufficient to conclude that Defendant's milk dealer license should be suspended. The Board concludes that a 20-day suspension of Defendant's milk dealer license is appropriate given the facts of this case.
5. Defendant received no notice that alleged payment violations for milk received in August 2023 and September 2023 would be considered during this hearing. The Board concludes that it is improper to consider those alleged violations in this decision.

III. ORDER

AND NOW, to wit, this 7th day of February 2024, it is hereby ORDERED, ADJUDGED, AND DECREED, as follows:

Defendant's milk dealer license 10000186 shall be suspended for 20 days commencing on April 1, 2024.

Pursuant to §404.1 of the Milk Marketing Law, act of April 28, 1937, P.L. 417 as amended (31 P.S. §700j-404.1) the Board will accept an offer in compromise at the rate of \$150.00 for each day of suspension as a penalty in lieu of such suspension, and thereupon rescind the suspension. The penalty in lieu of suspension shall be \$3,000.00.

Defendant shall notify the Board on or before March 7, 2024, whether it will pay the penalty in lieu of suspension. The penalty in lieu of suspension shall be received by the Board on or before March 21, 2024.

A certified copy of this Order shall be served upon Defendant, according to Law, and the original Order shall be filed in the office of the Pennsylvania Milk Marketing Board, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110.

PENNSYLVANIA MILK BOARD

Robert N. Barley, Chairman

James A. Van Blarcom, Member

Kristi Kassimer Harper, Consumer Member

Date: February 7, 2024