

COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

COMMONWEALTH OF PENNSYLVANIA,
MILK MARKETING BOARD,

v.

WILLIAM N. SHAFFER
LICENSE NO. 2023100,
Defendant

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LEGAL DOCKET NO CE-19-013

ORDER

I. FINDINGS OF FACT

1. On December 4, 2019, the Pennsylvania Milk Marketing Board (Board) held a hearing to consider evidence and testimony to determine whether a claim should be made against the license year 2019-2020 milk subdealer's corporate surety bond of William N. Shaffer ("Defendant").
2. On November 2, 2019, Board Staff issued citation CE-19-013 to Defendant. That citation alleged that Defendant violated section 404(2) of the Pennsylvania Milk Marketing Law (Law), act of April 28, 1937, P.L. 417 as amended (31 P.S. §700j-404(2)) by failing to account and make payment for milk purchased from Valley during the 2019-2020 license year (July 1, 2019 – June 30, 2020) totaling \$28,659.24 and by failing to account and make payment for milk purchased from Galliker Dairy Company ("Galliker"), Johnstown, Pennsylvania, during the 2019-2020 license year totaling \$15,876.08.
3. Ray Cassidy, Galliker's Vice President for Sales & Marketing, testified at the hearing. Mr. Cassidy testified that Galliker continued to do business with Defendant on a cash-on-delivery basis with Defendant paying down his past due balance. However, Mr. Cassidy also had just learned that one of Defendant's checks was not honored due to insufficient funds. The amount Defendant owed Galliker was not certain due to the not-honored check and potential additional checks that would not be honored.
4. Due to the uncertain nature of Defendant's continuing business with Galliker and the amounts owed and being paid down, the Board continued the hearing for citation CE-19-013 to a later date to be determined.

5. For the 2019-2020 license year, Defendant filed with the Board a milk subdealer's corporate surety bond (also bond number Q90 8073915) issued by Erie Insurance Company of \$35,000.00.
6. On February 22, 2021, the Board Staff filed an affidavit of Steven Zalman detailing the amounts owed to Valley and Galliker for price-controlled packaged products Defendant received during the 2019-2020 license year for which Defendant paid neither Valley nor Galliker. Mr. Zalman is the Board's Director of Enforcement and Accounting. Based on Mr. Zalman's affidavit, the Board found
 - a. During the 2019-2020 license year Defendant received price-controlled packaged product from Valley in the amount of \$28,659.24 for which Defendant did not pay Valley.
 - b. During the 2019-2020 license year Defendant received price-controlled packaged product from Galliker in the amount of \$19,579.53 for which Defendant did not pay Galliker.
 - c. The total amount owed by Defendant to Valley and Galliker for price-controlled packaged products for the 2019-2020 license year was \$48,238.77.
7. In preparation of paying the bond proceeds to Valley and Galliker, Mr. Zalman reviewed the unpaid invoices again. Mr. Zalman's review found a Galliker invoice that was double-counted. On April 2, 2021, the Board Staff filed an updated affidavit of Steven Zalman. Based on the updated affidavit, the Board now finds
 - a. During the 2019-2020 license year Defendant received price-controlled packaged product from Valley in the amount of \$28,659.24 for which Defendant did not pay Valley.
 - b. During the 2019-2020 license year Defendant received price-controlled packaged product from Galliker in the amount of \$17,498.70 for which Defendant did not pay Galliker.
 - c. The total amount owed by Defendant to Valley and Galliker for price-controlled packaged products for the 2019-2020 license year is \$46,157.94.

8. Based on the credible, persuasive, and uncontradicted testimony of Mr. Zalman as offered in his affidavits, the Board finds that Defendant received price-controlled packaged products from Valley and Galliker during the 2019-2020 license year, for which Defendant did not pay, worth
 - a. Valley: \$28,659.24
 - b. Galliker: \$17,498.70

9. The Board finds that Defendant did not pay all amounts due to Valley and Galliker under the Milk Marketing Law, its amendments and the orders and regulations of the Milk Marketing Board within the time periods provided by the Milk Marketing Law, its amendments and the orders and regulations of the Milk Marketing Board during the 2019-2020 license year. The Board finds that Defendant failed to pay Valley \$28,659.24 due under the Milk Marketing Law, its amendments and the orders and regulations of the Board during the 2019-2020 license year. The Board finds that Defendant failed to pay Galliker \$17,498.70 due under the Milk Marketing Law, its amendments and the orders and regulations of the Board during the 2019-2020 license year.

10. The Board finds that a claim should be made against Defendant's 2019-2020 license year milk subdealer's corporate surety bond in the full amount of \$35,000.00 due to Defendant's failure to pay \$46,157.94 combined to Valley and Galliker for purchases of price-controlled packaged products during the 2019-2020 license year.

11. Defendant's bond is not sufficient to cover the total amount owed to Valley and Galliker. Therefore the Board finds that the bond proceeds should be distributed on a pro rata basis as the amount owed by Defendant to each dealer to the total amount owed to both dealers.

$$[(\text{amount owed dealer})/(\text{total amount owed both dealers})] \times (\text{bond amount})$$

12. The Board finds that Valley's share of the bond is

$$\$28,659.24/\$46,157.94 \times \$35,000.00 = \$21,731.33$$

13. The Board finds that Galliker's share of the bond is

$$\$17,498.70/\$46,157.94 \times 35,000.00 = \$13,268.67$$

14. The Board will collect the total bond proceeds and distribute \$21,731.33 to Valley and distribute \$13,268.67 to Galliker.

II. CONCLUSIONS OF LAW

1. Defendant received at least five days' notice of the hearing held on December 4, 2019.
2. The Defendant violated section 404(2) of the Law (31 P.S. §700j-404(2)) in that it did not pay all amounts due to Valley and Galliker under the Law, its amendments and the orders and regulations of the Milk Marketing Board within the time periods provided by the Law, its amendments and the orders and regulations of the Milk Marketing Board during the 2019-2020 license year.
3. The evidence presented to the Board was sufficient to conclude that a claim should be made against Defendant's 2019-2020 license year milk subdealer's corporate surety bond in the amount of \$35,000.00.

III. ORDER

AND NOW, to wit, this 7th day of April 2021, it is hereby ORDERED, ADJUDGED, AND DECREED, as follows:

A claim shall be made against Defendant's license year 2019-2020 milk subdealer's corporate surety bond in the amount of \$35,000.00.

The proceeds of the bond shall be distributed by the Board on a pro rata basis to Valley and Galliker. Valley shall receive \$21,731.33. Galliker shall receive \$13,268.67.

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.

Robert N. Barley, Chairman

James A. Van Blarcom, Member

Dated: April 7, 2021