

COMMONWEALTH OF PENNSYLVANIA
MILK MARKETING BOARD

IN RE DEALER LICENSE APPLICATION OF HAZOU PREMIUM DAIRY LLC

ORDER

I. FINDINGS OF FACT

1. On September 16, 2021, Hazou Premium Dairy LLC ("Hazou") filed an application with the Pennsylvania Milk Marketing Board ("Board") for a milk dealer's license.
2. Board Staff reviewed the license application, and on September 22, 2021, requested the Board hold a hearing to determine if the Board should grant a dealer license to Hazou. Staff cited Hazou's "continued and repeated failure to submit its required monthly reports, despite repeated informal and formal warnings and the issuance of citations to Hazou, as well as its failure to timely apply for the renewal of its Milk Dealer's license."
3. The Board held the hearing on October 6, 2021.
4. Steven Zalman testified on behalf of Board Staff. Mr. Zalman is the Board's Director of Enforcement and Accounting. Mr. Zalman supervises the enforcement staff that has attempted to assist Hazou comply with the Milk Marketing Law and Board Regulations. Mr. Zalman testified regarding Hazou's repeated non-compliance with the Board's monthly report requirement. Milk dealer monthly reports are due by the 25th of each month to report the preceding month's activity.
5. Hazou received its first milk dealer license in April 2019. In November 2019 Staff made its first contact with Hazou regarding late dealer reports. Mr. Zalman testified in detail regarding the 20 Staff email contacts with Hazou between November 2019 and May 2021 in Staff's repeated attempts to gain Hazou's compliance with the monthly report requirement. Mr. Zalman also testified that Staff made eight attempts to contact Hazou by phone in the same period. These contacts often involved explanations of how to complete the required report and referral to Staff auditors who would assist as necessary. A list of the email contacts is attached to this order as Attachment A. In summary, Staff made 28 email or phone contacts with Hazou in an 18-month period attempting to gain Hazou's compliance with the monthly report requirement. The repeated contacts are a drain on Staff resources.
6. Mr. Zalman testified that dealer monthly reports are an integral feature of the Board's effective administration of the Milk Marketing Law and related statutes

and regulations. He also testified that almost 200 dealers file monthly reports and that Hazou is in a category by itself of dealers that do not comply with the monthly report requirement.

7. Mr. Zalman testified that the majority of Hazou's monthly reports would be "no activity" reports, as Hazou did not receive milk during those months. He also testified that completion of a no-activity report is simple. Dealer monthly reports are available on the Board's website at <https://www.mmb.pa.gov/Licensing/Dealer/Pages/default.aspx> and may be completed and submitted electronically. A no-activity report requires the dealer to place an "X" in a box on the cover page, complete the identifying information (name, license number, report month, and address), and email the report to the address listed on the cover page. A monthly report cover page is attached as Attachment B.
8. Mr. Zalman testified that in addition to the email and phone contacts Staff had issued five formal warnings and two citations to Hazou in its attempts to gain compliance with the monthly report requirement. Mr. Zalman explained that Staff's goal is compliance, not punishment. Warnings and citations are last resorts when compliance cannot be gained through informal contact.
9. Hazou was not represented by an attorney, but Elias Hazou testified. The Board informed Mr. Hazou that he was not required to testify. Mr. Hazou indicated that he understood he was not required to testify. Mr. Hazou was apologetic regarding his repeated non-compliance with the monthly report requirement but offered no relevant reason or mitigating circumstance to explain why, despite 28 contacts in 18 months, he continued to file monthly reports late. Mr. Hazou did testify that he would comply going forward with the requirement to timely file monthly reports.
10. Mr. Hazou testified that it was his intention to purchase Pennsylvania producer milk and provide employment for local residents. He also testified, however, that various regulatory hurdles had prevented him from going into full operation.
11. Hazou was not licensed at the time of the hearing. Its license year 2020-2021 license expired on June 30, 2021. Its application for license year 2021-2022 was received on September 22, 2021. Hazou did not conduct any business between July 1, 2021, and September 22, 2021, that would require a milk dealer license. Staff informed producers that had shipped milk to Hazou prior to September 22, 2021, that Hazou was not licensed, and they should not ship milk to Hazou. We infer that Hazou did not conduct any business between September 22, 2021, and October 6, 2021, that would require a milk dealer license. The Board must decide whether to grant Hazou a license for the remainder of the 2021-2022 license year.
11. The Board finds that Staff presented substantial evidence that Hazou should not be granted a dealer license due to its continued violation of the Milk Marketing

Law and Board regulations by failing to timely file monthly reports. In so finding the Board relies on Mr. Zalman's credible and persuasive testimony. We also find that Mr. Hazou did not provide evidence that demonstrated to us any relevant mitigating circumstances or reasons to explain Hazou's repeated violations.

12. Section 404 of the Law (31 P.S. §700j-404) provides, in part, that "[t]he board may grant a provisional and temporary license to an applicant or to a prior licensee when and if for any cause the action of the board with respect to an application seasonably filed has not become final prior to the expiration of the period of such prior license. Such a temporary and provisional license may be issued on such terms and conditions as the board may impose, and shall authorize the licensee to continue in business until final action with respect to his pending application has been taken and no longer."

Section 404 gives the Board discretion to grant a temporary license to Hazou based on a "seasonably filed" application while we decide whether to grant a regular license to Hazou. We must first decide whether Hazou's license year 2021-2022 application was "seasonably filed."

Section 403 of the Law (31 P.S. §700j-403) requires that milk dealer license applications be filed on or before June 15. Hazou's application was received September 22. However, Hazou was not engaged in any business that would require a milk dealer license between July 1 and September 22. Therefore, we find that Hazou did seasonably file its application, despite that application being filed after June 15. If an entity is not conducting business that requires a dealer license, it is not obligated to acquire a dealer license.

13. Having found that Hazou's application was "seasonably filed" we now must decide whether to grant Hazou a temporary license while we await post-hearing briefs and then issue a final order regarding Hazou's milk dealer license application.

Like Board Staff, the Board prefers compliance to punishment. We consider denying Hazou's license application a last resort if we conclude that it is futile to expect future compliance with the Law and Board Regulations. Based on Hazou's demonstrated record of consistent and persistent non-compliance despite Staff's repeated attempts to bring Hazou into compliance, the Board is close to concluding that we cannot expect future compliance and that we should therefore deny Hazou's license application. However, because such denial is a last resort, we find that we should grant Hazou a temporary license effective until we issue a final order regarding Hazou's license application.

14. Having found that we will grant Hazou a temporary license, we turn to what conditions, if any, to impose on that temporary license.

Because of Hazou's history of non-compliance with the requirement to timely file monthly reports, we will issue a temporary license to Hazou on the condition that it comply with all provisions of the Milk Marketing Law, related statutes, and Board Regulations.

The Board particularly emphasizes that the grant of this temporary license is conditioned on Hazou's timely filing of milk dealer monthly reports and remind Mr. Hazou that the reports are due by the 25th of each month to report the preceding month's activity. Board Staff is directed to inform the Board if any Hazou monthly report is filed late. If a monthly report is not filed on time this temporary license will be revoked.

15. The Board has delegated to its Secretary the authority to issue provisional licenses. The Board delegated that authority so that applicants would not have to wait for approval at the next Board meeting to begin operations. We find in this matter that it is appropriate to delegate to our Secretary the authority to grant Hazou a provisional temporary license so that it can begin operating immediately.
16. This temporary license will remain in effect until the Board issues a final order regarding Hazou's milk dealer license application. If Hazou complies with the condition of this temporary license, the Board will consider that compliance in our order regarding Hazou's license application.

II. CONCLUSIONS OF LAW

1. Hazou Premium Dairy received adequate notice of, and was given a reasonable opportunity to be heard at, the October 6, 2021, milk dealer license application hearing.
2. Board Staff presented substantial competent evidence demonstrating that Hazou Premium Dairy's milk dealer license application should be denied.
3. The Board concludes that it is appropriate to grant Hazou Premium Dairy a temporary license conditioned on Hazou's compliance with applicable laws, regulations, and orders until the Board issues a final order regarding the license application.
4. This temporary license is effective beginning October 12, 2021.

III. ORDER

AND NOW, to wit, this 3rd day of November 2021, it is hereby ORDERED, ADJUDGED, AND DECREED, as follows:

Hazou Premium Dairy LLC is granted a temporary milk dealer license.

This temporary license is conditioned on strict compliance by Hazou Premium Dairy LLC with all provisions of the Milk Marketing Law, related statutes, and Board regulations.

This temporary license will be revoked if Hazou Premium Dairy LLC violates any provision of the Milk Marketing Law, related statutes, or Board regulations.

A certified copy of this Order shall be served upon Hazou Premium Dairy LLC 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

Kristi R. Kassimer, Consumer Member

Dated: November 3, 2021

Attachment A

Staff Email Contacts with Hazou Premium Dairy, LLC

1. November 1, 2019, to Elias Hazou, request for late Monthly Dealer Reports for August 2019, September 2019 not received, License Fee Calculation Sheets not received, with instructions given.
2. November 7, 2019, request to Elias Hazou, late Monthly Dealer Reports for August, September 2019 still not received, needed.
3. November 13, 2019, again requested late August, September 2019, and also October 2019 now due.
4. January 15, 2020, requested late November, December 2019 License Fee Calculation Sheets.
5. March 10, 2020, telephone conversation, and email request for late Milk Dealer Report for January 2020, instructions for filing when “no activity” has occurred .
6. July 27, 2020, provided Elias Hazou with a list of missing monthly Milk Dealer Reports, also requested April, May and June 2020 late reports.
7. August 5, 2020, again requested late April, May and June Milk Dealer Reports from Elias Hazou.
8. August 6, 2020, Staff acknowledgement of receipt of Hazou Premium calculation sheets, and another request by Staff for April, May and June 2020 reports.
9. September 4, 2020, requested to Elias Hazou for late July 2020 monthly Milk Dealer Reports and Fee Calculation sheets.
10. November 5, 2020, sent Elias Hazou sample license fee calculations, and current license fees owed by Hazou Premium.
11. November 5, 2020, requested completed July, August and September 2020 reports, with instructions given and a sample prepared, along with Hazou’s assigned auditor contact information for any assistance that may be needed.

Attachment A

12. November 16, 2020, request and notice sent to Elias Hazou, need requested overdue July, August, September 2020 reports by November 23, 2020, and fees owed check. Warning of Staff's legal referral given.
13. November 18, 2020, notice to Elias Hazou that nothing was received in his last sent email.
14. November 20, 2020, again sent Elias Hazou contact information for his assigned auditor.
15. December 10, 2020, notice sent to Elias Hazou that Hazou Premium's October 2020 Milk Dealer's Report has not been received, provided 10 business days to send in the report.
16. December 28, 2020, notice sent to Elias Hazou that reports had been sent in need to be completed, requested information be completed.
17. March 4, 2021, request to Elias Hazou for the late January 2021 Milk dealer Report.
18. March 16, 2021, again, notice to Mr. Hazou that the January 2021 report still has not been filed.
19. May 10, 2021, request to Mr. Hazou that the March 2021 Milk Dealer Report has not been received.
20. May 21, 2021, telephone call and email sent to Elias Hazou, again requesting the March 2021 Dealer Report and Fee Calculation Sheet.

Attachment B

PENNSYLVANIA MILK MARKETING BOARD
2301 NORTH CAMERON STREET
HARRISBURG, PENNSYLVANIA 17110-9408

Milk Dealer's Monthly Report

EACH DEALER OPERATING UNDER A FEDERAL MARKETING ORDER MUST FILE A COPY OF ALL REPORTS FILED WITH AND RECEIVED FROM THE FEDERAL MARKET ADMINISTRATOR.

This report must be filed by the 25th day of each month for the preceding month.

Dealer :
PMMB License Number :
For the Month of : year of:

Place an "X" in box if no activity

SAVE

(Plant Location:) Street:
City:
State:
Zip:

If you need additional space to complete any part of this report, please contact the Board so adjustments do not conflict with established fields.

I hereby certify that I am the milk dealer above named, or the duly authorized representative of said milk dealer, and that I have read the foregoing report and am familiar with the contents herein, and certify the same to be true and correct to the best of my knowledge and belief.

Name:
Date:
Telephone Number:
E-Mail Address:
File Name:

Email file to: ra-pmmb62@pa.gov
Reports not submitted via the above email will be considered not received.