

**IN THE UNITED STATE DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BIAZZO DAIRY PRODUCTS, INC.,	:	
	:	
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION
PENNSYLVANIA MILK MARKETING	:	Case Number:
BOARD,	:	
	:	
Defendant.	:	

COMPLAINT

COMES NOW BIAZZO DAIRY PRODUCTS, INC., plaintiff in the above styled case, and files this its complaint for damages, declaratory judgment, and injunctive relief, showing this Honorable Court the following facts, to wit:

Jurisdiction

The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1331 as it presents a federal question as to whether Pennsylvania state statutes, 31 Pa. Stat. § 700j-103 (which defines a “milk dealer”), 7 Pa. Code § 151.9 (b)(2) (defining what the word “owed” means) and 31 P.S. § 626.7 (Bond Requirement for Milk Dealers), individually and collectively violate the Interstate Commerce Clause of the United States Constitution, set out in Article 8, Section 1, Clause 3 and are unconstitutional as applied.

Jurisdiction is further conveyed by virtue of the fact the parties are citizens or political entities of different states and the amount in controversy is greater than \$75,000 as required by 28 USC § 1332 dealing with diversity matters.

Parties

1.

Biazzo Dairy Products, Inc. is a corporation organized and operating under the laws of the State of New Jersey. It manufactures and distributes cheese products throughout the United States.

2.

The Pennsylvania Milk Marketing Board (PMMB) is an administrative agency of the Commonwealth of Pennsylvania charged with regulating and administering the sale of milk within and without the Commonwealth.

Background

Biazzo Dairy Products, Inc. has been in business for sixty-two years. From the date of its formation, it has never maintained an office or had a physical presence of any sort in the Commonwealth of Pennsylvania. None of its officers, employees, or shareholders live in the Commonwealth. Its only contact with the state is to purchase milk from Pennsylvania farmers that is delivered to it in Ridgefield, New Jersey.

In 2023, the company was sold to the Weintraub Family Trust. New management took over operations of the business on or about April 9, 2024.

Shortly after assuming control of the company Biazzo was contacted by staff officers of the Pennsylvania Milk Marketing Board (PMMB) and informed, since they met the state definition of a “milk dealer” under Commonwealth law, they were obligated to post a bond based on the amount of milk the company purchased the previous year. The bond was slightly in excess of \$900,000.

Based upon the language in the statute which provides, a milk dealer’s bond is calculated based on the amount “owed” to the various farmers (milk suppliers), Biazzo contends making payment at the time the milk’s delivery weight is reconciled, that is, when the contents are actually weighed at off-loading¹, they *owe nothing* and would therefore exempt from the bond requirement, tying up nearly a million dollars in capital, or incurring the cost of a bond premium of nearly \$100,000. Even though Biazzo made tendered timely payment at the time of delivery and virtually instant after any weight discrepancies were resolved, the PMMB disagreed. A staff attorney for the PMMB informed company management, posting a bond was an absolute requirement.² Further, the company could not post a cash bond as the PMMB was not set up to receive the same. Biazzo did post a bond for the calendar year 2024.

Based on its new milk purchases, the bond Biazzo faces for the coming calendar year (calculated by the PMMB in April and due in July) they will have to post a bond of nearly three million dollars.

¹ Plaintiff either makes payment instant or within 24 hours if the date falls on a holiday or weekend.

² Counsel for the Board after receiving Biazzo’s request for an exemption contacted Biazzo’s general counsel and explained the staff attorney had made an error when he told company management C.O.D. payments were not authorized. Plaintiff believes the error was made in good faith.

Biazzo filed a petition asking to be exempt from posting a bond that is presently pending before the PMMB.

Count I

Pennsylvania's Statutes Violate the Interstate Commerce Clause

3.

Article 8, Section 1, Clause 3 of the United States Constitution grants Congress the right to regulate commerce between the states.

4.

Taken in conjunction, 31 Pa. Stat. § 700j-103 (which defines a “milk dealer”), 31 Pa. Stat § 626.7 (Bond Requirement for Milk Dealers), and 7 Pa. Code § 151.9 (b)(2) (defining what the word “owed” means), said statutes individually and collectively violate the Commerce Clause of the United States Constitution and place an impermissible burden on the plaintiff.

5.

The above-referenced statutes are unconstitutional per se and unconstitutional as applied to the facts of this case.

Count II

Plaintiff realleges the averments in paragraphs one (1) through five (5) of Count I as if the same were fully set forth herein.

6.

Pennsylvania statute 7 Pa. Code § 151.9 (b)(2) changing the definition of the word “owed” to mean “amount paid” is unconstitutional per se and unconstitutional as applied.

7.

The word “owed” should be given its ordinary meaning in the English language.

Count III

Plaintiff realleges the averments in paragraphs one (1) through seven (7) of Counts I and II as if the same were fully set forth herein.

Declaratory Judgment

8.

Plaintiff is entitled to a declaratory judgment holding the above Pennsylvania statutes are discriminatory in nature and constitute an impermissible burden on interstate commerce.

9.

Plaintiff is entitled to declaratory judgment holding, as long as it pays Pennsylvania milk producers as required by law and by C.O.D. at the time any weight discrepancies in the deliveries are resolved, it should be exempt from the PMMB’s bond requirement as it will owe such producers nothing.

10.

Plaintiff is entitled to declaratory judgment determining that it is not a dealer of milk within the meaning of 31 Pa. Stat. § 700j-103 in that it has never had a physical presence within

the Commonwealth, does not sell milk, or resell it anywhere within the United States. Any milk acquired by Biazzo is shipped to it in New Jersey and used solely to manufacture the cheese it produces.

Count IV

Plaintiff realleges the averments in paragraphs one (1) through ten (10) of Counts I, II and III as if the same were fully set forth herein.

Injunctive Relief

11.

Plaintiff is entitled to a preliminary and permanent injunction enjoining the PMMB from requiring it to post a bond under 31 Pa. Stat. § 626.7.

12.

Unless an injunction is issued, plaintiff will suffer irreparable harm to its business interests as the policy of the PMMB staff attorneys is to send out letters to Pennsylvania milk producers advising them not to do business with milk dealers who have not posted a bond in the amount they have determined and advising said producers that sanctions will be imposed on them for violating such admonition.

13.

Based upon its purchase of milk during the preceding calendar year, Biazzo has been advised the anticipated bond the PMMB will require for the *upcoming* year will be approximately three million (\$3,000,000) dollars. Such amount is unduly burdensome and places an impermissible chill on interstate commerce.

14.

If compelled to post a three million (\$3,000,000) bond it will result in Biazzo abandoning its business in the Commonwealth of Pennsylvania and harm the very milk producers it is the PMMB's duty to protect.

15.

The bond requirement is onerous in nature and in excess of an incidental burden permissible under the law.

Count V

Damages

Plaintiff realleges the averments in paragraphs one (1) through fifteen (15) of Counts I, II, III and IV as if the same were fully set forth herein.

16.

Based upon the inadvertent misrepresentation of the PMMB's staff attorney that it could not post a cash bond and that C.O.D. payments were not acceptable to the Board, Biazzo incurred the expense of \$28,000 in needless bond premium payments and is entitled to be reimbursed for the same.

17.

If required to post a bond for the coming calendar year, it will result in a loss of business to the plaintiff in excess of one million (\$1,000,000) dollars in addition to having to pay for a bond premium of over \$90,000. In view of the foregoing, plaintiff is entitled to judgment in such amount as the evidence in this case may demonstrate.

WHEREFORE, the plaintiff prays:

- a) That service and process issue as provided by law;
- b) With respect to Count I, Commonwealth statutes, 31 Pa. Stat. § 700j-103; 31 Pa. Stat § 626.7, and 7 Pa. Code § 151.9 (b)(2) that a declaratory judgment issue holding said statutes to be unconstitutional, or in the alternative, that said statutes be held unconstitutional as applied;
- c) That both a preliminary and permanent injunction preventing the defendant from declaring the plaintiff to be a milk dealer under Pennsylvania law and requiring it to post a bond under 31 Pa. Stat. § 700j-103 and 31 P.S. § 626.7 so long as it continues to pay Pennsylvania milk suppliers via C.O.D., and;
- d) That 7 Pa. Code § 151.9 (b)(2) changing the meaning of the word “owed” to mean the amount paid, be declared unconstitutional and unconstitutional as applied, and;
- e) That this Honorable Court award damages to the plaintiff in accordance with the evidence adduced in the case, and;
- f) For such other relief as this Court may deem fair and equitable.

Respectfully submitted,
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