

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

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IN THE MATTER OF THE CLAIMS OF )  
PRODUCERS FOR MILK AND CREAM SOLD ) DOCKET NO. 1707  
TO KNETTER CHEESE COMPANY, INC. ) FINDINGS OF FACT,  
 ) CONCLUSIONS OF LAW  
 ) and ORDER  
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Notice for the filing of claims and a hearing thereon was published and posted in this matter as required under s. 100.06(4), Wis. Stats. As provided in the notice, the hearing commenced at 10:00 a.m. on April 12, 1984, in the Food Division Conference Room of the Wisconsin Department of Agriculture, Trade and Consumer Protection, 801 West Badger Road, Madison, Wisconsin. There was no appearance on behalf of Knetter Cheese Company, Inc., nor on behalf of the state receiver for the insolvent dairy plant. Appearing on behalf of the National Farmers Organization Members' Dairy Custodial Account, the sole claimant in this proceeding, was Attorney Jerome D. Krings. Attorney James K. Matson appeared on behalf of the Trade and Consumer Protection Division of the Department of Agriculture, Trade and Consumer Protection. At a prehearing conference, the represented parties stipulated various facts and documents which, together with the dairy plant's failure to contest the filed claim or this default proceeding, allowed disposition of the action by stipulation and without an evidentiary hearing. The stipulation consists of a typed principal document and a hand-written addendum, both executed by Donald J. Soberg,

Administrator, Trade and Consumer Protection Division, Wisconsin Department of Agriculture, Trade and Consumer Protection, and Jerome D. Krings, attorney for NFO Members' Dairy Custodial Account.

NOW, THEREFORE, based upon the stipulated facts and documents identified as exhibits in the stipulation, the Department issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

(1) Knetter Cheese Company, Inc., hereinafter called Knetter, is a Wisconsin corporation, with its principal and only place of business located at 612 South 8th Street, Cameron, Barron County, Wisconsin, and was, prior to February 6, 1984, engaged in the manufacturing and sale of cheese and cheese products. At all times relevant to this proceeding, Knetter was licensed by the Wisconsin Department of Agriculture, Trade and Consumer Protection under ss. 97.20 and 100.06, Stats., to operate the dairy plant at Cameron, Wisconsin, and was subject to the security requirements under s. 100.06, Stats., and Chapters Ag 7 and Ag 8, Wis. Adm. Code.

(2) The State of Wisconsin Department of Agriculture, Trade and Consumer Protection, hereinafter referred to as the Department, is an agency of the State of Wisconsin, responsible for the administration of ss. 97.20 and 100.06, Wis. Stats., and has both personal jurisdiction over Knetter and subject matter jurisdiction over this proceeding.

(3) Pursuant to s. 100.06(2)(b), Stats., and Ch. Ag 8, Wis. Adm. Code, Knetter was licensed on the basis of security filed with the Department under Ch. Ag 8, Wis. Adm. Code. The security is filed in the form of a single certificate of deposit in the face amount of \$262,000.00. The certificate of deposit is assigned to the Department, and is kept in safe deposit custody on behalf of the Department by the Park Bank, Madison, Wisconsin. The certificate of deposit is held by the Department as security for the benefit of producers entitled to payment for milk and cream shipped to Knetter, pursuant to the requirements and limitations of s. 100.06, Stats. Security funds are payable to producers having unpaid claims against the dairy plant, where the claims are allowed by the Department in an administrative proceeding under s. 100.06, Stats.

(4) The National Farmers Organization, Inc., hereinafter called NFO, is an Iowa corporation authorized to do business in Wisconsin. NFO has its home office in Corning, Iowa, and its principal Wisconsin office located at 825 Water Street, Sauk City, Sauk County, Wisconsin.

(5) The NFO Members' Dairy Custodial Account is an express trust established under Iowa law. The NFO Members' Dairy Custodial Account has its home office in Corning, Iowa, and its principal Wisconsin office located at 825 Water Street, Sauk City, Wisconsin, and exists as a trust for the purpose of collecting monies owed to NFO member-producers.

(6) Various farmers, producers of milk and dairy products in Wisconsin, have contracted with NFO, authorizing NFO to act as their exclusive agent to negotiate and enter into contracts for the sale of their milk and dairy products. These producers are members of NFO. The contract between NFO and the producers provides that NFO is authorized to require any purchasers of milk or dairy products to pay the entire amount due for the milk and dairy products to the NFO Members' Dairy Custodial Account. The contract further provides that the NFO Members' Dairy Custodial Account, after making certain authorized deductions, shall pay the net proceeds of sale to the producers of the milk or dairy products, those producers being the beneficiaries of the express trust. According to NFO, payments for milk delivered to Knetter by NFO were deposited in a temporary depository account at the Farmers and Citizens Bank, Sauk City, Wisconsin, and subsequently transferred to an account established at the National City Bank, Minneapolis, Minnesota, in the name of the NFO Members' Dairy Custodial Account.

(7) Beginning on or about March 11, 1983, and continuing through February 3, 1984, NFO delivered milk to Knetter, pursuant to an agreement negotiated between NFO and Knetter. The agreement was negotiated by NFO on behalf of its producer members, pursuant to its contract with producers. Following the delivery of the milk, NFO provided Knetter with invoices requesting payment for the milk in the amounts shown on the invoices.

(8) On February 15, 1984, the Department received written notice of Knetter's default in payment to NFO, from John Linden of the NFO Wisconsin office. The letter stated that Knetter had failed to make payment for milk when due and payable under the contract between NFO and Knetter.

(9) On February 17, 1984, the Department issued a Notice to Producers for the Filing of Claims under s. 100.06, Stats. The notice directed all producers having claims for milk and cream sold to Knetter to file verified proofs of claim with the Department. Under terms of the Notice, signed by Secretary La Verne Ausman, producers failing to file claims on or before April 10, 1984, were barred from participating in the distribution of funds under s. 100.06, Stats., except as otherwise allowed by the Department for good cause shown. The notice also included a notice of hearing on producer claims, and on the Department's audit of claims, scheduled for April 12, 1984, at the Department's Madison office.

(10) A copy of the Department's February 17, 1984, notice was prominently posted at the entrance to the Knetter business premises on February 20, 1984, and was published weekly for three successive weeks between February 22, 1984, and March 7, 1984, in the Barron County News-Shield, a weekly newspaper of general circulation published in the city of Barron, Barron County, Wisconsin.

(11) Knetter Cheese Company, Inc., is in receivership under state law by order of the Barron County Circuit Court, Case No. 84-CV-65. Attorney Gregory Jennings, 1128 Second Street,

Chetek, Wisconsin, was appointed as temporary receiver on February 22, 1984, and as permanent receiver on February 29, 1984. The above receiver was given a copy of the Department's February 17, 1984 notice of this proceeding, as well as oral notice.

(12) On March 23, 1984, the NFO Members' Dairy Custodial Account filed a verified proof of claim with the Department. No other claims by producers or agents of producers have been filed with the Department in this proceeding. The claim of the NFO Members' Dairy Custodial Account was made on behalf of its beneficiaries, producers whose milk had been delivered to Knetter pursuant to the marketing agreement between NFO and the producers. The overall averaged invoice price for the three-month period of December, 1983, through February, 1984, was \$13.39 per hundred-weight. The period in which the milk was shipped to Knetter, the claimant's invoice number, payment due date, and amount claimed by NFO was itemized in the following manner:

<u>Shipping Period</u>	<u>Invoice No.</u>	<u>Payment Due Date</u>	<u>Amount</u>
December 15-31, 1983	5538	1-15-84	\$ 79,101.87
December 15-31, 1983	5545	1-15-84	439.00
December 15-31, 1983	5547	1-15-84	18,651.91
December 15-31, 1983	5690	1-15-84	1,734.03
January 1-15, 1984	5752	2-1-84	116,100.00
January 15-31, 1984	5904	2-15-84	6,456.83
January 15-31, 1984	5907	2-15-84	121,090.24
February 1-15, 1984	5992	3-1-84	30,800.00
February 1-15, 1984	6114	3-15-84	<u>292.19</u>
			\$374,666.07

(13) The NFO claim was audited by the Department who determined that the claim should be reduced by \$99,926.81. This amount was due and payable more than 30 days prior to the first written notice of default. The amount of the NFO claim due and payable for milk and cream delivered to Knetter no more than 30 days prior to February 15, 1984, the date the first written notice of default was received by the Department, is \$274,739.26.

(14) The NFO Members' Dairy Custodial Account is a proper claimant under s. 100.06, Stats. NFO, under the terms of its agreement with producers, paid out of its trust funds the amounts due and owing to producers for milk or cream delivered to Knetter. NFO then filed a claim with the Department for the amount paid to the producers under the assignment of rights and title provisions contained in the agreement.

#### CONCLUSIONS OF LAW

(1) Knetter is subject to s. 100.06, Wis. Stats., and personal and subject matter jurisdiction of the Department.

(2) The letter received on February 15, 1984, from John Linden of NFO was the first written notice of default under s. 100.06, Wis. Stats.

(3) Claims which are allowable are those for the value of milk or cream due and payable to producers or their assignees no more than 30 days prior to receipt of the first written notice of default.

(4) Section 100.06, Wis. Stats., the state's dairy plant bonding and security law, was enacted to assure that producers are promptly paid for the value of milk or cream purchased by and sold to a dairy plant, and in so doing contemplates that the price to be paid shall be based upon the terms of the contract between the dairy plant and producers. Under s. 100.06(4), Wis. Stats., the law provides a remedy for the breach of any obligations on the part of the dairy plant to pay producers for milk or cream delivered when due and payable.

(5) Because of the assignment of rights and title to NFO by its members under the agreement, NFO is a proper party to this proceeding as assignee of the producers, and may file a claim for the value of milk and cream delivered even though member producers were paid by NFO for the milk delivered. The failure by Knetter to pay NFO the full contract price for milk delivered constitutes a breach of an obligation under s. 100.06, Wis. Stats., and a default within the meaning of s. 100.06(4), Wis. Stats.

(6) The average price for the milk and cream delivered to Knetter under terms of the contract bargained by NFO for the purchase of milk and cream by Knetter was \$13.39 per hundredweight.

(7) The total amount of the NFO claim which is allowable is \$274,739.26.

(8) The Department shall issue an order allowing the following amount of the claim;

<u>Claimant</u>	<u>Amount of Claim Allowed</u>
NFO Members' Dairy Custodial Account	\$274,739.26

(9) The Department should surrender the certificate of deposit which it holds as assignee of Knetter, to Union State Bank, Amery, Wisconsin. The Department should also demand from Knetter the amount of additional funds necessary to satisfy the allowable claim. Upon receipt of the money to be applied to the satisfaction of the allowable claim, the Department shall make distribution in accordance with the final order allowing the claim. The Department should request that payment be made by Knetter within 30 days of service of the final findings, conclusion and order.

(10) The Department should pay to NFO Members' Dairy Custodial Account the amount received from surrender of the certificate of deposit and additional amounts received from Knetter in satisfaction of the allowed claim.

ORDER

Under s. 100.06, Wis. Stats., and in accordance with the findings of fact and conclusions of law, IT IS ORDERED that:

(1) The following claim filed against Knetter Cheese Company, Inc., is allowed in the amount listed:

<u>Claimant</u>	<u>Amount of Allowed Claim</u>
NFO Members' Dairy Custodial Account	\$274,739.26

(2) The following claim filed against Knetter Cheese Company, Inc., is disallowed in the amount listed:


<u>Claimant</u>	<u>Amount of Claim Not Allowed</u>
NFO Members' Dairy Custodial Account	\$ 99,926.81

(3) A copy of the findings, conclusions, and this order allowing or disallowing the claim shall be mailed to all persons who filed claims against Knetter by regular mail and to Knetter by certified mail.

(4) The Department surrender the certificate of deposit which it holds as security for the benefit of producers entitled to payment for milk and cream shipped to Knetter, pursuant to the requirements of s. 100.06, Stats. Knetter is currently the defendant in a receivership action in Barron County Circuit Court Case No. 84-CV-65, and the sole claimant in this proceeding is the party plaintiff in the action (NFO Members' Dairy Custodial Account v. Knetter Cheese Company, Inc). Therefore, the department is not ordered to demand from or commence an action against Knetter for the additional funds necessary to satisfy the allowed claim, inasmuch as such a demand or commencement of an action on behalf of claimant would be redundant with NFO's own claim in the receivership action.

(5) Upon receipt of funds to be applied to the satisfaction of the allowed claim, the Department shall distribute the funds collected in full or proportionately to the claimant having an allowed claim, in accordance with this order.

Signed this 14 day of JUNE, 1984.

  
La Verne Ausman, Secretary

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

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