No. 128508

IN THE
SUPREME COURT OF ILLINOIS

ROBERT MILLER,	)	On appeal from the Appellate
	)	Court of Illinois, Fourth Judicial
Plaintiff-Appellee,	)	District, No. 4-21-0204
	)	
	)	
	)	There heard on appeal from the
v.	)	Circuit Court of the Eleventh
	)	Judicial Circuit, Ford County,
	)	Illinois, No. 2019 MR 16
	)	
ILLINOIS DEPARTMENT OF	)	
AGRICULTURE,	)	The Honorable
	)	MATTHEW J. FITTON,
Defendant-Appellant.	)	Judge Presiding.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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NATURE OF THE ACTION

Plaintiff-Appellant Robert Miller filed a claim with the Illinois Department of Agriculture ("Department") for compensation from the Illinois Grain Insurance Fund ("Fund") under the Illinois Grain Code ("Grain Code"), 240 ILCS 40/1-1 *et seq.* (2020), after a grain dealer to whom he had sold grain failed due to financial deficiencies. The Director of the Department ultimately denied his claim, determining that the claim did not meet the requirements for recovery set out by the Grain Code. Specifically, the Director determined that the grain had not been priced during the 160-day period preceding the failure, a requirement under the Grain Code. The Director reasoned that because the parties had not entered into a price later contract within 30 days of delivery, the grain was priced as a matter of law on the next business day following the 30th day after delivery, pursuant to section 10-15(e) of the Grain Code. And because this pricing date was more than 160 days before the failure, Miller's claim was ineligible for recovery. The circuit court affirmed the Director's decision. Miller appealed.

The appellate court reversed the Director's decision, holding that section 10-15(e) does not operate as a matter of law but is instead a directive to the grain dealer to set the price for the grain.

This Court granted the Department's petition for leave to appeal.

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ISSUES PRESENTED FOR REVIEW

1. Whether this Court should uphold the Director's interpretation that section 10-15(e) of the Grain Code operates as a matter of law to price grain automatically if no contract is signed within 30 days of delivery because (1) the plain and ordinary meaning of the statute's language so provides; (2) that reading is consistent with the rest of the Grain Code; (3) that reading is the only one that furthers the Grain Code's stated purpose; and (4) even if there were two reasonable alternative interpretations, this Court should defer to the Director's reasonable interpretation.

2. Whether Miller was afforded due process and other procedural protections under the Grain Code during the administrative proceedings.

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JURISDICTION

The circuit court entered a final order affirming the Director's administrative decision on March 15, 2021. A15-22.[1] Miller appealed on April 7, 2021, A48, within 30 days of the circuit court's judgment, *see* Ill. Sup. Ct. R. 303(a)(1). On April 26, 2022, the appellate court issued an opinion reversing the circuit court's judgment, thereby reversing the Director's administrative decision. A1-14. The Department did not seek rehearing. On July 25, 2022, the Department filed a motion for an extension of time to file a petition for leave to appeal, A49, and this Court granted the motion, allowing the petition to be filed by September 13, 2022. A50. The Department filed its petition on September 12, 2022. A51. On November 30, 2022, this Court allowed the petition. A52.

[1] This brief cites the one-volume common law record as "C___," Miller's opening brief in the appellate court as "Miller Br. ___," the Department's response brief in the appellate court as "Dep't Br. ___," and the appendix to this brief as "A___."

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STATEMENT OF FACTS

The Grain Code's protections in the event of a grain dealer failure

Illinois is home to one of the largest grain industries in the country. In 2022, the State was the leading producer of soybeans and the second largest producer of corn in the United States — accounting for well over 15% of the national yield of each crop. United States Department of Agriculture, Crop Production 2022 Summary, 10, 51, *available at* bit.ly/3LTTyJm.[2] The value of corn production was nearly $15 billion and that of soybeans was nearly $10 billion in that same timeframe. United States Department of Agriculture, 2022 State Agriculture Overview, *available at* bit.ly/3zbfmc8. And in the same year, corn and soybean global exports from Illinois generated $3.5 billion in revenue. Press Release, Illinois Counties Lead the Nation for Corn and Soybean Production in 2022, (Mar. 20, 2023), *available at* bit.ly/3ZzBTu1.

Recognizing that the "Illinois grain industry comprises a significant and vital part of the State's economy," the Illinois General Assembly passed the Grain Code in 1996 to create a single statutory framework to regulate the grain industry and replace the then-existing collection of laws applicable to transactions in the grain industry. P.A. 89-287 (repealing the Grain Dealers Act, 225 ILCS 630/1 *et seq*., the Public Grain Warehouse and Warehouse

[2] This Court may "take judicial notice of facts that are readily verifiable by referring to sources of indisputable accuracy," such as those on government websites. *People v. Johnson*, 2021 IL 125738, ¶ 54.

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Receipts Act, 240 ILCS 15/1 *et seq*., and the Illinois Grain Insurance Act, 240 ILCS 25/1 *et seq*.).

The Grain Code's purpose is to improve the economic stability of the State's agricultural sector by, among other things, creating the Fund to protect producers in the event of a failed licensee, a licensee being either a licensed grain dealer or licensed warehouseman. 240 ILCS 40/1-5 (2020); *id*. § 40/1-10. A grain dealer is defined as an individual or entity in the business of buying grain from producers, and a warehouseman as an individual or entity in the business of storing grain for compensation. *Id*. § 40/1-10. A licensee fails when it is rendered insolvent, when the Department revokes its license for failure to comply with licensing requirements, or when the license is otherwise surrendered. *Id*. Licensees, as well as lenders to licensees and first sellers of grain to Illinois grain dealers, pay assessments, based on the value of grain purchased or sold, that maintain the Fund. *Id*. § 40/5-30.

In the event of a failure, the Director has the power to liquidate all grain assets and any unencumbered equity assets of the failed entity and deposit the proceeds into the grain indemnity trust account ("trust account"). *Id*. § 40/20-5(c). The trust account receives and disburses monies from the Fund, as well as proceeds from liquidation of assets of failed licensees, for the payment of claims and other expenses with respect to failed licensees. *Id*. § 40/20-5(a)-(c); *id*. § 40/1-10. A separate reserve fund from the general revenue budget is also available if the Fund does not have adequate resources.

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Id. § 40/30-25. The General Assembly may appropriate further funds if those from the Fund and general revenue budget are insufficient to pay all the valid claims. *Id*. § 40/25-20(h).

Producers may submit claims to the Department and, if they meet certain criteria under the Grain Code, they will be compensated accordingly for grain delivered to failed licensees that remains unpaid. *Id*. § 40/10-25. All valid claims are paid out of the trust account for that failure, *id*. § 40/25-20(a), which often includes resources from the Fund, *see id*. § 40/25-20(b). The Grain Code requires particular criteria to be met for recovery if grain was sold pursuant to a price later contract, meaning an agreement to sell grain where the purchase price will be determined by the seller after delivery in accordance with a formula in the contract. *Id*. § 40/1-10. As relevant here, a producer may recover 85% of the proceeds if the grain was either (1) delivered or (2) priced within 160 days of the grain dealer's failure. *Id*. § 40/25-10(d). The claimant must further show that either the price later contract was executed or that the grain had been delivered within 365 days of failure. *Id*. § 40/25-10(d). Failure to meet either of these criteria bars recovery. *Id*. § 40/25-10(g)(1)-(2).

Miller's sale of grain to SGI and SGI's subsequent failure

Contract 211: the first price later contract. On October 10, 2015, Miller, a corn producer, and SGI Agri-Marketing LLC ("SGI"), a licensed grain dealer,

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entered into a price later contract, Contract 211. C316, 328.[3] In this contract, Miller and SGI acknowledged that 1,376.09 bushels of corn had been delivered a few weeks earlier on September 25, 2015, and the parties agreed that the seller, meaning Miller, was to price that grain on any date from the date of the contract to November 29, 2015. C316, 328. The contract noted that if Miller failed to price the grain according to the contract terms, the grain would automatically be priced at the closing price of corn futures at the Chicago Board of Trade ("CBOT") on the last day of the pricing period — here, November 29, 2015. *Id.*

The contract contained a section of disclosures and explicitly incorporated the Grain Code, outlining several provisions "caution[ing]" Miller. *Id.* As relevant here, the parties agreed that the execution of subsequent price later contracts for grain covered by the contract would not extend coverage beyond the original 365 days that the Grain Code required. *Id.*; 240 ILCS 40/25-10(g)(2) (2020).

The delivery of the grain to SGI. After the September 25, 2015 grain delivery from the first contract, Miller continued to deliver grain to SGI until January 26, 2016. C141-56. In total, Miller delivered 17,366.72 bushels of corn to SGI during this timeframe. *Id.* Miller delivered no grain to SGI after January 26, 2016.

[3] Review of the complete one-page contract requires cross-referencing the cited copies, which each contain unreadable portions.

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Contract 215: the second price later contract. On March 15, 2016 — 48 days after the last delivery — Miller and SGI signed another price later contract, Contract 215, for the sale of 15,508.25 bushels of corn. C317. The contract acknowledged that the grain had been delivered between September 25, 2015, and January 26, 2016. *Id*. Miller agreed to sell the corn to SGI for the contract price of July 2016 futures at the CBOT, with some price variance for grain delivered on different dates, on any business day between the date of the contract and June 25, 2016, and Miller was to select the day for pricing. *Id*.

Contract 215 contained the same disclosures under the Grain Code as Contract 211. *Id*. The parties' understanding was that the "contract must be signed by both parties within 30 days after the last date of delivery or the grain will be priced on the next available business day at the closing price on that day," *id*., mirroring section 10-15(e) of the Grain Code, *see* 240 ILCS 40/10-15(e) (2020). The disclosures also noted that the contract will cease to be the basis of a valid claim and the seller will not be entitled to any recovery if the date of delivery or the date of pricing the grain is more than 160 days before the date of failure. C317. The parties also agreed that within five days after the seller selected the price for the grain, the buyer would mail the seller a confirmation of the price selected. *Id*.

The purchase confirmation. SGI sent Miller a "purchase confirmation," P-9733, dated May 18, 2016. C123. The document stated that it was a

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"[c]onfirmation of [a]greement between" Miller and SGI's representative. *Id*. The purchase confirmation noted the CBOT price per bushel of $3.625 and then adjusted the varied pricing for the different deliveries agreed to in Contract 215. *Id*. The purchase confirmation stated that this price applied to 15,508.25 bushels of corn, the amount listed in Contract 215. *Id*.; C317. The bottom of the purchase confirmation requested that Miller sign and return a copy immediately and that he should promptly report any errors. C123. Miller waited until June 6, 2016, to sign and another day to send back. *Id*. A report generated by SGI noted that deliveries made between September 25, 2015, and January 26, 2016, were included on a purchase confirmation dated May 18, 2016, and noted the relevant prices. C156.

Despite never receiving payment from SGI for the 17,366.81 bushels of corn, *see* C76, Miller never notified the Department.

SGI's failure. On November 1, 2016, the Department suspended SGI's grain dealer license and later revoked it, C77, after discovering financial irregularities in SGI's financial statements.[4] Shortly after, the Department notified Miller that SGI's suspension on November 1 constituted a failure under the Grain Code, leaving indebtedness to producers. C75, 77. The

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[4] *See* Feed & Grain, Department Revokes Grain Dealer License (Jan. 10, 2017), https://www.feedandgrain.com/news/illinois-department-of-agriculture-revokes-grain-dealer-license. *See Leach v. Dep't of Emp. Sec.*, 2020 IL App (1st) 190299, ¶ 44 (citing *Village of Catlin v. Tilton*, 281 Ill. 601, 602-03, 117 N.E. 999 (1917)) (permitting judicial notice of information on public websites so long as that information is readily verifiable.)

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Department notified Miller that he could file a claim for grain sold to SGI for which he had not yet received payment. C77.

The Department's denial of Miller's claim. Later that month, Miller submitted a proof of claim to the Department. C76. He claimed that he sold 17,366.81 bushels of corn to SGI on May 18, 2016. *Id.*[5] He further claimed that the sold grain was worth $95,447.28. *Id.*

In February 2017, the Department, through its Bureau of Warehouses, notified Miller that he was not entitled to any compensation because none of the grain he sold to SGI had been sold within 160 days of the failure. C77 ("Department's determination"). The Department's determination noted that Miller could request a hearing before the Department regarding the determination. *Id.* Miller then requested a hearing through retained counsel. C78.

The timeline on the following page shows the sequence of the relevant events and indicates at what point the 160-day window, in which the grain must have either been priced or delivered for Miller to recover, *see* 240 ILCS 40/25-10(g)(1) (2020), began.

[5] During the administrative proceeding, Miller conceded that 1,858.56 bushels included in the 17,368.81 bushels were part of a July 2014 contract, not part of this record, and did not meet the Grain Code's requirements for a valid claim after a failure, leaving 15,508.25 bushels as part of his claim here. C115. The remaining 15,508.25 bushels are the total listed in Contract 215, C317, but this number also includes the 1,376.09 bushels delivered under Contract 211, C141, 142, 156, 316, 328.

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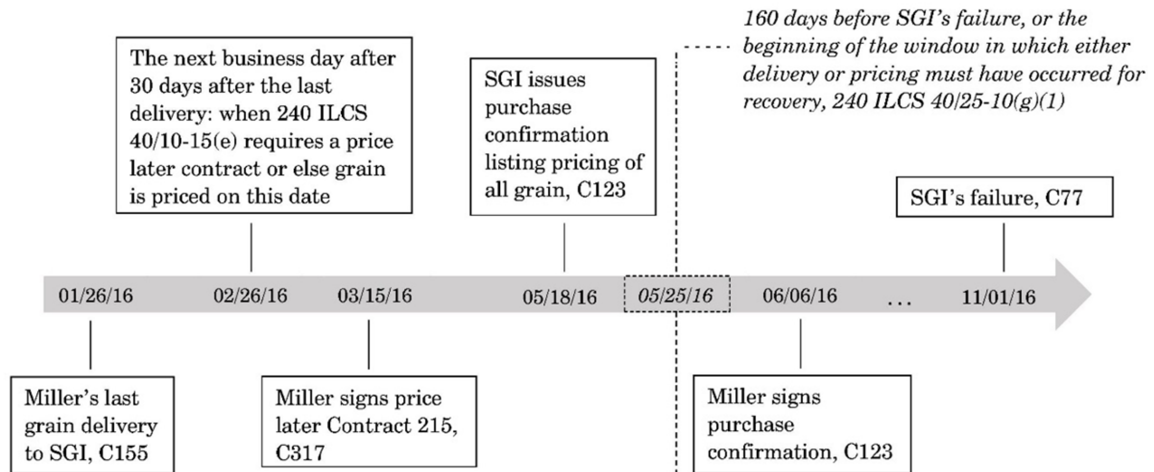

The administrative proceedings

Email communications between Miller and the Department. A few months after the Department's determination that Miller was not entitled to compensation and after an Administrative Law Judge ("ALJ") had been assigned to the matter, Miller's counsel exchanged emails with the Department. C85, 90, 91, 96-105. During this exchange, the Department initially stated that Miller could recover 85% of the total price of the grain he delivered after September 25, 2015, from the Fund. C88.[6] In his email response, Miller disputed this amount, claiming that he was also entitled to payment resulting from the September 25, 2015 deliveries, for a total of 15,508.25 bushels. C87-88. The Department responded, reiterating that its calculation did not include the 1,376.09 bushels delivered on September 25, 2015, that Miller claimed "were rolled from another price later contract." C86-

[6] Though parts of the record refer to payment from the Fund, all valid claims are paid from the relevant trust account, 240 ILCS 40/25-20(a) (2020), which includes contributions from the Fund, *see id*. §§ 40/20-5(e); 40/25-20(b).

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87.[7] Miller responded again claiming that he was entitled to recover for all 15,508.25 bushels, including some of those delivered on September 25, 2015. C86.

The following month, as part of these communications, and after further review of which grain deliveries could be covered under the Grain Code, the Department stated in a letter to Miller its position that none of the grain Miller had delivered to SGI was entitled to the protections of the Grain Code. C96-97. In the letter, the Department explained that it had analyzed each of the two contracts individually. *Id*. First, the Department stated that the grain sold through Contract 211 was both delivered and priced more than 160 days before SGI's failure, which rendered it unrecoverable under the Grain Code. C96. The Department acknowledged Miller's assertion that Contract 211 was "rolled into" Contract 215, but it observed that there was no such notation in the contract. *Id*. Second, the Department noted that, because Contract 215 was not signed within the required 30 days of the last delivery, as a matter of law under the Grain Code, the grain had been priced on the business day following 30 days after the last delivery, or on February 26, 2016. C97 (citing 240 ILCS 40/10-15(e) (2020)). The Department further

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[7] Miller delivered four separate grain deliveries on September 25, 2015, two of which were part of a July 2014 contract not at issue here, C115, 140, 141, 156, and two of which were part of Contract 211, C141, 142, 156. The Department's calculation in this email correspondence of 14,132.16 bushels excluded all grain delivered on September 25, 2015. C92.

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noted that Miller could provide additional information for its consideration or, alternatively, schedule an administrative hearing. *Id*.

Proceedings before the ALJ. Miller wrote a letter to the ALJ claiming that the parties had "essentially resolved the issue," but that after some back-and-forth, the Department again denied his claim. C79-80. He requested that he "be paid immediately" and stated he wanted a "hearing to address these issues." C80. The ALJ requested that the parties explain what occurred in the parties' email communications between September 2017 and January 2018 (described above), which the parties did by stipulation. C82.

In addition to the stipulation and the email communications, C82-97, the ALJ requested, and the parties provided, the grain tickets for the deliveries between Miller and SGI, C137. Both the Department and Miller also drafted briefs, largely focusing on Miller's contention that the Department was bound by its earlier email communications estimating the amount owed. C106-22. The Department explained that it must act in accordance with the Grain Code, so to the extent the Department represented that Miller could partially recover, it could revoke that representation to properly enforce the Grain Code. C112-13. And even applying traditional contract principles and assuming the Department made Miller a settlement offer, the Department argued, Miller did not accept any offer, but rather he countered, and the parties never came to an agreement, so the Department was not bound in any event. C109-12. Miller, on the other hand, maintained that the Department

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was bound by its earlier emails in which it estimated Miller was owed 85% of the amount purportedly owed for deliveries after September 25, 2015. C118 (citing C86-88). Miller claimed further that he was entitled to recover for all of the grain addressed in the purchase confirmation — the grain included in Contract 215 — and that he should get statutory judgment interest. C119. In his brief, Miller also emphasized his position that the grain was not priced until he signed the purchase confirmation on June 6, 2016. C117-18.

The July 23, 2018 ALJ decision. Upon reviewing the parties' submissions, the ALJ reversed the Department's determination that Miller was not entitled to recover and instead found that Miller was entitled to compensation for the 15,508.25 bushels in Contract 215. A29-47. In so finding, the ALJ determined that the 1,376.09 bushels from Contract 211 were properly included in Contract 215. A40.

When determining when the grain in Contract 215 had been priced, the ALJ did not apply the language of section 10-15(e) but rather applied the next subsection in the Grain Code, 240 ILCS 40/10-15(f), which applies only to licensed warehousemen. A42. That section provides that if grain is stored with a licensed warehouseman, and the grain dealer and producer intend to enter into a price later contract, that grain will not be deemed sold until the contract is signed. *Id*.

Because it applied section 10-15(f), the ALJ determined that the date of pricing was either June 6, 2016, the date on which Miller signed the purchase

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confirmation, or May 28, 2016, 10 days after the date of the purchase confirmation, applying the Uniform Commercial Code's 10-day objection period for when parties do not enter into a written contract but when a merchant sends a confirmation to satisfy the statute of frauds. A44-45. The ALJ concluded that the grain had been priced within the 160-day window prior to failure (*i.e.*, after May 25, 2016) in either case. A46.

The Department's petition for reconsideration. A week after the ALJ issued the decision, the Department filed a petition for reconsideration. C34-37. The Department emphasized that the facts were not in dispute but rather the only issue between the parties was when the grain was priced. C34-35. The Department argued that the ALJ erred when he determined that section 10-15(f) applied to the facts because SGI was never licensed as a warehouseman. C36. And by relying on section 10-15(f), the ALJ erroneously found that the grain was not deemed sold until a contract was executed by both parties. *Id*. Here, the Department explained, section 10-15(e) instead governed the outcome, and it does not provide such leeway to enter into a contract at any point, but rather states that if no contract is signed within 30 days of the last delivery, then grain is priced as a matter of law the following business day after 30 days following delivery. C36-37. For this reason, the ALJ's reliance on the later price confirmation was misplaced. C36-37. And because pricing occurred on the business day following 30 days after delivery — February 26, 2016 — it fell outside the 160-day recovery window. C37.

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Thus, Miller could not recover for his claim under the Grain Code. *Id*. Miller did not file a response to the petition.

The October 26, 2018 Director's decision. The Director granted the petition for reconsideration, determining that the ALJ erred in concluding that SGI was a warehouseman, and therefore, subsection 10-15(f) did not apply. A24. The Director concluded that the grain was priced automatically as a matter of law on February 26, 2016, under section 10-15(e), because the parties did not enter into a contract until more than 30 days after the last delivery. A26. The Director also determined that Contract 211 was not "rolled into" Contract 215 as there was no such notation on the document, but it was not necessary for the Department to consider this because Contract 215 was not priced or delivered within 160 days of SGI's failure. *Id*. The Director also determined that the Department was not bound by any representation about paying Miller because Miller had been informed twice that he was not entitled to compensation. A27. Thus, no contract existed and even if one did, it would be void against public policy because it would be against the Grain Code. *Id*.

The Director noted that it was regrettable that Miller failed to notify the Department about SGI's failure to pay him because doing so would have allowed the Department to investigate and prevent other farmers from suffering loss. A25, 27. The Director also explained that the 160-day rule for both pricing and delivery is a helpful mechanism for farmers because it

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provides them with the flexibility to defer income to the following year for tax purposes but also curbs the length of time in which grain dealer failures may go undetected. A25.

The circuit court proceedings

Miller brought a complaint for administrative review in circuit court. C7-10. In addition to claiming that he was entitled to compensation under his interpretation of the Grain Code, Miller argued that the Department was bound by its determination in email correspondence that Miller was entitled to some compensation, that the Department violated the Grain Code because it failed to make a determination on his claim within 120 days of SGI's failure, that the Director did not have the authority to grant the Department's petition for reconsideration, and that the Department violated his due process rights because he did not have a hearing on the merits of the claim. C497-511. Following briefing by the parties, the circuit court affirmed the Director's decision, A15-22, determining that the grain had been priced in accordance with section 10-15(e) on February 26, 2016, because the parties did not enter into a contract within 30 days of the last delivery, A18. The circuit court also found that Miller's procedural arguments were unpersuasive. A18-21. Specifically, it concluded that Miller had the opportunity to be heard as due process required and that the Department was not bound by any statements until it made its final administrative decision. *Id.*

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The appellate court proceedings

Miller appealed, A48, arguing that section 10-15(e) required the grain dealer to price the grain if no contract was signed within 30 days of delivery, Miller Br. 22. The Department responded that because section 10-15(e) does not indicate an actor who is to price the grain, pricing under this provision occurs automatically as a matter of law. Dep't Br. 21. The Department also explained that even if both interpretations were reasonable, the court should defer to the reasonable interpretation of the Department, as the entity charged with administering the Grain Code, under established precedent. *Id*. at 25. Miller also made the same procedural arguments as he made in the circuit court. Miller Br. 23-32. The Department responded that the administrative proceeding comported with due process and the requirements set forth by the Grain Code. Dep't Br. 22-26.

The appellate court reversed the Director's decision and affirmed the ALJ's decision. *Miller v. Dep't of Agric.*, 2022 IL App (4th) 210204, ¶ 37 (full decision at A1-14). Although the court held that section 10-15(e) is "unambiguous," *id*. ¶ 35, it also concluded that an "unnamed" entity is responsible for pricing the grain on the next business day after the 30th day after delivery if no price later contract is executed, *id*. ¶ 28. The court reasoned that because the relevant sentence in section 10-15(e) uses the passive voice to state that the grain "shall be priced" on the next business day after the 30th day after delivery, that necessarily means an actor who is omitted from the sentence is responsible for pricing the grain. *Id*. The court

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further concluded that because section 10-15(e) is found in the chapter of the Grain Code titled "Duties and Requirements of Licensees," the licensee, which includes grain dealers, must be the one to price the grain. *Id.* ¶ 30. It also reasoned that because section 10-15(e) requires the grain dealer to send notice if pricing under that section occurs, that meant that the pricing could not have occurred automatically as a matter of law but rather that it must have been an act undertaken by the grain dealer. *Id.* Relying on the dictionary definition of the word "price," the court concluded that the grain dealer must "set[]" or "determine[e]" the price on the next business day after the 30th day after delivery. *Id.*

And although it acknowledged that SGI was not a warehouseman under section 10-15(f) as the ALJ had determined, *id.* ¶ 33, the appellate court stated that it was affirming the ALJ's decision, *id.* ¶ 37. In doing so, the court appeared to hold that Miller's claim was priced at some point within 160 days of SGI's failure under its interpretation of section 10-15(e). *Id.*; *see* A44-45.

ARGUMENT

Whether Miller is entitled to recover from the trust account hinges on whether the grain he sold to SGI was priced less than 160 days before SGI failed. Section 10-15(e) states that if no price later contract is signed within 30 days of delivery, as was the case here, grain "shall be priced on the next business day after 30 days" from delivery "at the market price of the grain at the close of the next business day after the 29th day." 240 ILCS 40/10-15(e)

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(2020). The Director correctly interpreted this provision using settled principles of statutory interpretation as operating as a matter of law, meaning that the grain had been priced automatically on February 26, 2016, because Miller and SGI did not enter into a price later contract within the required 30 days. And because under the Director's interpretation, the pricing date fell long before the 160-day recovery window, Miller's claim was not eligible for recovery.

To start, the plain language of section 10-15(e) does not indicate that any entity or individual is to set the price of the grain but rather the statute itself determines that the price of the grain will be the market price at a particular time, with no variation of any kind available. And because the dictionary definition of "to price" means "to fix" or "to set" the price of something, section 10-15(e) could only be construed to mean that grain shall be set to the applicable market price if no contract is signed — an event that does not require any further action from any actor but rather one that operates as a matter of law. Miller's reading, adopted by the appellate court, however, directs the grain dealer to price the grain even though the grain dealer is not mentioned, impermissibly reading in language that does not appear on the face of the statute and producing the absurd result of requiring the grain dealer to price the grain (and potentially be punished for failing to comply) without providing any guidance about how to do so.

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The Director's interpretation also is the only one that is consistent with the rest of the Grain Code. Indeed, the Grain Code explicitly states when a grain dealer is to act. Separately, there are other instances in the Grain Code where no actor is provided, and the only plausible reading is that the event occurs automatically as a matter of law.

The Director's interpretation likewise is the only one that promotes the Grain Code's purpose of maintaining stability in the State's agricultural system and ensuring sufficient resources in the Fund to pay claimants who have comported with the Grain Code. If section 10-15(e) does not operate automatically as a matter of law, then grain dealers and sellers will be able to routinely enter into price later contracts long after 30 days after delivery, which will delay payment for grain sales and introduce unnecessary risk into the system. Moreover, the appellate court's decision, if left undisturbed, will allow claimants who enter into these risky, belated transactions to extend their coverage from the Fund indefinitely, taking away resources from individuals who completed their transactions promptly.

But even if the appellate court's interpretation was an alternate reasonable reading of section 10-15(e), that would at most mean that the language is ambiguous. And where a statute is ambiguous, courts will defer to the agency's reasonable interpretation, like the Director's here.

Separately, the Director correctly determined that the grain that was subject to Contract 211 could not be part of Contract 215, and thus, recovery

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for that grain is barred. Moreover, if this Court should disagree with the Director's interpretation of section 10-15(e) and determine that the grain was not priced as a matter of law on February 26, 2016, this Court should remand to the Department for a determination of the date of pricing, rather than affirm the ALJ's nonfinal administrative decision.

Finally, to the extent that Miller will raise the same due process challenges he raised at the appellate court, these are without merit and cannot serve as alternate ground for relief.

I. The Court reviews questions of statutory interpretation *de novo* and defers to the agency's reasonable interpretation of a statute it administers.

Section 10-15(e) states that if no contract is signed within 30 days of delivery, grain "shall be priced on the next business day after 30 days" from delivery "at the market price of the grain at the close of the next business day after the 29th day":

> (e) Subject to subsection (f) of this Section, if a price later contract is not signed by all parties within 30 days of the last date of delivery of grain intended to be sold by price later contract, then the grain intended to be sold by price later contract shall be priced on the next business day after 30 days from the last date of delivery of grain intended to be sold by price later contract at the market price of the grain at the close of the next business day after the 29th day. When the grain is priced under this subsection, the grain dealer shall send notice to the seller of the grain within 10 days. The notice shall contain the number of bushels sold, the price per bushel, all applicable discounts, the net proceeds, and a notice that states that the Grain Insurance Fund shall

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> provide protection for a period of only 160 days from the date of pricing of the grain.
>
> In the event of a failure, if a price later contract is not signed by all the parties to the transaction, the Department may consider the grain to be sold by price later contract if a preponderance of the evidence indicates.

240 ILCS 40/10-15(e) (2020).

The issue before this Court is whether this provision operates automatically as a matter of law or requires the grain dealer to set the price under these circumstances. *See* 240 ILCS 40/10-15(e) (2020). Because this question involves the interpretation of a statute, it is subject to the *de novo* standard of review. *Medponics Ill., LLC v. Dep't of Agric.*, 2021 IL 125443, ¶ 31; *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 16.

If a statute is ambiguous, however, meaning that "it is capable of being understood by reasonably well-informed persons in two or more different ways," *People ex rel. Birkett v. City of Chi.*, 202 Ill.2d 36, 46 (2002), an agency's reasonable interpretation will be given deference on *de novo* review, *Hadley v. Ill. Dep't of Corr.*, 224 Ill. 2d 365, 370-71 (2007); *Medponics*, 2021 IL 125443, ¶ 31 ("[A]n agency's interpretation of a statute is given deference on *de novo* review unless it is erroneous, unreasonable, or conflicts with the statute.").

In an administrative review action, like this one, the Court "review[s] the decision of the administrative agency, not the appellate court." *Sangamon Cnty. Sheriff's Dep't v. Ill. Hum. Rts. Comm'n*, 233 Ill. 2d 125, 136 (2009). And to the extent that Miller will raise any procedural arguments an alternate

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ground for relief, this Court should review these issues discussed below, *infra* pp. 44-48, *de novo*. *Lyon v. Dep't of Child. & Fam. Servs.*, 209 Ill. 2d 264, 271 (2004).

II. This Court should uphold the Director's decision as it properly interpreted section 10-15(e) as stating that grain is priced as a matter of law 30 days after the last delivery if no contract is timely executed.

A. The plain and ordinary language of section 10-15(e) unambiguously states that pricing occurs without any further action required by the grain dealer if no contract is executed within 30 days of delivery.

The Court's primary "duty is to ascertain and give effect to the intent of the legislature." *Hadley*, 224 Ill. 2d at 371. "The best evidence of the legislative intent is the language of the statute," which must be given "its plain and ordinary meaning." *In re Donald A.G.*, 221 Ill. 2d 234, 246 (2006). The plain and ordinary language in section 10-15(e) can only be interpreted one way: that in the event a price later contract is not executed within 30 days of delivery, then the price of the already delivered grain is set to the closing market price on the business day following 29 days after delivery and that price goes into effect on the business day after 30 days from the last date of delivery. 240 ILCS 40/10-15(e) (2020). Because this provision states exactly what occurs if no contract is signed (the grain "shall be priced"), when the event occurs ("on the next business day after 30 days from the last delivery"), and how the event occurs ("at the market price of the grain at the close of the

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next business day after the 29th day"), there is no further action that needs to be taken to effectuate the price set out by this provision.

The verb "price" is defined as "[t]o fix or state the price of" an item. Oxford English Dictionary, "Price" (verb), bit.ly/3TvTilV; Merriam-Webster, "Price" (verb), bit.ly/42owjx2 (accessed on Apr. 19, 2023) (defining "price" as "to set a price on" or "to find out the price of"); *see People v. Baskerville*, 2012 IL 111056, ¶ 19 ("When a statutory term is not expressly defined, it is appropriate to denote its meaning through its ordinary and popularly understood definition."). Here, section 10-15(e) itself "fixes" or "states" the price for the grain to be that of the closing market price on the business day after 29 days after delivery, leaving no further action to be undertaken. 240 ILCS 40/10-15(e) (2020). In addition, the phrase "be priced (at)" has been defined as "to have a certain monetary value." Cambridge Dictionary, "be priced (at)," bit.ly/3nkbUJk. Likewise, under this definition, on the business day following 30 days after delivery, the grain has the value of the market price of the closing market price on the business day after 29 days after delivery. Thus, the only reasonable reading is that 30 days after delivery, the price is set by the statute to the market price at the applicable time and goes into effect as a matter of law.

In dismissing the Director's interpretation, the appellate court supplied alternate constructions for this provision, claiming that the General Assembly could have used different language in this provision had it meant for the

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provision to operate as a matter of law. *See Miller*, 2022 IL App (4th) 210204, ¶ 29. These alternate constructions, however, do not respect the plain meaning of the word "price." The appellate court suggested that had the General Assembly intended the pricing to occur automatically as a matter of law, it should have said that the "grain shall price" or "grain prices" on the next business day following the 30th day. *Miller*, 2022 IL App (4th) 210204, ¶ 29. But because the verb "price" is defined as to "fix or state the price of" an item, *see* Oxford English Dictionary, "Price" (verb), bit.ly/3TvTilV, that would lead to an illogical result. The language would then say that the grain itself would be setting or fixing the price to the market price, which does not make sense. Indeed, the limits of these alternate constructions demonstrate why the General Assembly opted to use the language "shall be priced" in this provision. The Director's interpretation is the only one that adheres to the plain meaning of this language.

The Director's interpretation of section 10-15(e)'s plain language is further consistent with how courts have interpreted other statutes that operate as a matter of law. For example, the Illinois Code of Civil Procedure states that the percentage of annual interest on judgments "shall be computed" from the time of judgment. *See, e.g.*, 735 ILCS 5/2-1303 (2020). This provision has been interpreted to be "self-executing," and a trial court is without authority or discretion to change the interest. *See, e.g.*, *People for Use of Holland v. Halprin*, 30 Ill. App. 3d 254, 256 (1st Dist. 1975). Similarly, in

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the context of a statutory cap on economic damages in the Code of Civil Procedure, this Court read the phrase "shall be limited to $500,000" as a cap that occurred automatically as a matter of law — without need for more action by the court or the parties to limit recovery and despite the statute not using the word "automatically." *Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill. 2d 217, 230, 232 (2010) (statute overturned on unrelated special legislation grounds). Similarly here, the only reading consistent with the plain and ordinary meaning of the language of section 10-15(e) is that the pricing occurs automatically on the business day following the 30th day after delivery if no price later contract is executed in that time.

And while the appellate court dismissed the comparison to the statutory damages cap in *Lebron* by noting that the court was the one that would be the actor that eventually caps the damages award, *Miller*, 2022 IL App (4th) 210204, ¶ 31, that does not change that the provision operated as a matter of law, like the one here. Under the Director's interpretation, the grain automatically receives the price set by the statute on the business day following the 30th day after delivery. But as with any other provision, an individual or entity will still need to apply that price in a particular situation — here, this would likely be a producer seeking payment or the Department assessing claims for grain sold in the event of a failure. This, however, does not change that fact that on the business day following that 30th day, the grain has the price set by the statute.

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Indeed, interpreting statutory language that states exactly what is to occur at a particular time if a particular set of circumstances is present as self-executing is common. In a case interpreting similar language, a New York appellate court held that a local law that provided that a certain event "shall be deemed" to take place by a certain date meant that the provision was "self-executing" and needed no further action by any entity. *Sheriff Officers Ass'n, Inc. v. Cnty. Of Nassau*, 110 A.D.3d 998, 999 (N.Y. App. Div. 2013). Thus, the court ruled, a local law that stated certain employment positions "shall be deemed abolished effective no later than December 29, 2011" meant that the positions listed "will be deemed abolished as of the date set forth, without any further action by the County necessary." *Id*. at 999-1000.

For its part, the appellate court's focus on the General Assembly's use of the passive voice led to the court impermissibly supplying language that the legislature did not include in the text. This Court has cautioned that when interpreting a statute, courts "may not supply omissions, remedy defects, annex new provisions, substitute different provisions, add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of language employed in the statute." *People v. Grant*, 2022 IL 126824, ¶ 25 (quoting *King v. First Capital Fin. Servis. Corp.*, 215 Ill. 2d 1, 26 (2005)); *accord People v. Clark*, 2019 IL 122891, ¶ 47 (court may not "rewrite a statute to add provisions or limitations the legislature did not include"). Yet the appellate court did just that. The appellate court imposed a duty on grain

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dealers that that the General Assembly did not include in the text of section 10-15, unlike other parts of that provision that explicitly require grain dealers to do certain things. *Miller*, 2022 IL App (4th) 210204, ¶¶ 24, 30 (citing, for example, 240 ILCS 40/10-15(h), which requires that "[p]rice later contracts shall be issued consecutively and recorded by the grain dealer as established by rule").

Not only did the appellate court read in language that was not there, but its interpretation also created an obligation that is repetitive of what the statute itself already accomplishes, leading to an absurd result. This Court has been clear that even "where a plain or literal reading of a statute produces absurd results, the literal reading should yield." *People v. Hanna*, 207 Ill. 2d 486, 498 (2003). The appellate court's interpretation means that the grain dealer must, on the business day following the 30th day after delivery, "set[]" or "determine[e]" the price to the market price on the close of the business day following the 29th day after delivery. *Miller*, 2022 IL App (4th) 210204, ¶ 30. But the price is already set by the statute and the same section separately — and specifically — requires the grain dealer to send notice within 10 days of the date of pricing; as a result, there is no conceivable act for the grain dealer to undertake to "set the price." And while the appellate court gave no explanation of what act by the grain dealer would suffice to meet the obligation to price the grain, the court also noted that the Department is to punish those grain dealers who do not comply under section 10-15(j), *Miller*,

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2022 IL App (4th) 210204, ¶ 32, further confirming that the appellate court's interpretation produces absurd results.

B. The Director's interpretation is consistent with the rest of the Grain Code.

Not only does the Director's interpretation give effect to the plain language of section 10-15(e), but it is also consistent with the Grain Code as a whole.

Indeed, the Court does "not construe words and phrases of a statute in isolation; instead, all provisions of a statute are viewed as a whole." *In re Donald A.G.*, 221 Ill. 2d at 246. The rest of the Grain Code explicitly states when a particular person, like a grain dealer or a producer, is mandated to do something, but it is silent as to the actor where the provision operates as a matter of law. *Compare*, *e.g.*, 240 ILCS 40/10-15(h) (2020) ("[p]rice later contracts *shall be issued* consecutively and recorded *by the grain dealer*") *with* 240 ILCS 40/10-15(c) (2020) ("the value of grain *shall be figured* at the current market price") (emphasis added to both). For instance, the Grain Code states that title to grain sold by price later contract "shall transfer to a grain dealer at the time of delivery of the grain[,]" 240 ILCS 40/10-15(d), and elsewhere provides that "[t]itle to the grain passes to the grain dealer at the time of delivery[,]" 240 ILCS 40/1-10, leaving no ambiguity that this event occurs automatically at the time of delivery. Similarly, in section 10-15(f), which applies to grain stored with a warehouseman, the Grain Code states that "grain *shall be considered* as remaining in storage and not be deemed sold by

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price later contract until the date the price later contract is signed by all parties." 240 ILCS 40/10-15(f) (2020) (emphasis added). This provision again has no actor but its only plausible meaning is that when grain is stored with a warehouseman, it is considered to be in storage as a matter of law, without any further action by any party. *Id.*

The appellate court, however, dismissed this distinction because of the General Assembly's use of the passive voice, which the court interpreted as meaning that an "unnamed" entity is to undertake the pricing. *Miller*, 2022 IL App (4th) 210204, ¶ 28. And to fill that gap, the appellate court relied on the title of article 10, "Duties and Requirements of Licensees," to conclude that the pricing must be done by the grain dealer, a licensee. *Id.* ¶¶ 24, 30. The court also noted that section 10-15 elsewhere expressly provides directives to the grain dealers, so, the court concluded, a directive to the grain dealer must be implied here as well. *Id.* But this construction leads to unreasonable constructions elsewhere in the Code. Indeed, the same section, 10-15(e), also uses the passive voice to note that the grain that is to be priced is "grain intended to be sold by price later contract." 240 ILCS 40/10-15(e) (2020). This provision has no actor and uses the passive voice. Using the appellate court's logic of resorting to the title of the chapter and other, express directives in section 10-15 to determine the actor, the grain dealer would also be the one that intended to sell the grain. But by definition, the grain dealer is one who "engage[s] in the business of buying grain from producers." 240 ILCS 40/1-10

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(2020). The appellate court's reading therefore is inconsistent with both the Grain Code, generally, and specifically the very section it interpreted.

C. The Director's interpretation promotes the goals of the Grain Code and fulfills the General Assembly's intent.

The Director's reading also supports the aims of the Grain Code: to improve stability in the agricultural sector and to ensure that adequate resources exist in the Fund to compensate valid claims. 240 ILCS 40/1-5 (2020). When "determining legislative intent, a court may consider not only the language of the statute but also the reason and necessity for the law, the problems sought to be remedied, the purpose to be achieved, and the consequences of construing the statute one way or another." *In re Cnty. Collector*, 2022 IL 126929, ¶ 19; *accord Mashal v. City of Chi.*, 2012 IL 112341, ¶ 21 (court "may properly consider the language of the statute, the reason and necessity for the law, the evils sought to be remedied and the statute's ultimate aim."). Interpreting section 10-15(e) as pricing grain automatically as a matter of law if no contract is signed furthers the goals of the Grain Code in at least two ways.

First, by automatically capping the length of time grain can remain unpriced, the Director's interpretation of section 10-15(e) minimizes the risk that results from grain dealers obtaining possession of grain that producers cannot collect payment on because the grain has yet to be priced. Second, as evidenced by the belated contract between Miller and SGI, the Director's interpretation avoids opening the door for grain dealers and producers to

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indefinitely extend their coverage from the Fund, avoiding jeopardizing the resources for other claimants who act in a timely manner.

The history of the Fund demonstrates that the General Assembly sought to both curb grain elevator failures and to ensure that those producers who held outstanding, valid claims as a result of those failures would be compensated. The Fund was originally established by the Grain Insurance Act in 1983, P.A. 83-68, § 1 (1983), after ten grain elevator bankruptcies occurred in Illinois between 1975 and 1981, *see* United State Department of Agriculture, Grain Elevator Task Force, Report to the Secretary of Agriculture (1981), 48 ("Grain Elevator Task Force Report"), *available at* bit.ly/3Gyz8SI. The Grain Code, which now governs the Fund, and its amendments were also passed in response to various "devastating" grain elevator failures. 93rd General Assembly, House of Representatives Tr. 423 (May 31, 2003); 89th General Assembly, House of Representatives Tr. 80, 81 (Apr. 21, 1995).

With each legislative change, legislators discussed the importance of "adequate safeguards," "early warnings," and "flags" of improper grain dealer activity to prevent future failures. 93rd General Assembly, House of Representatives Tr. 421 (May 31, 2003); 89th General Assembly, House of Representatives Tr. 81 (Apr. 21, 1995). To that end, the Grain Code sets out stringent licensing requirements for grain dealers and warehousemen. 240 ILCS 40/5-5 (2020). The Grain Code also rewards producers who notify the Department that a grain dealer has not paid within 21 days of delivery of grain

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that has been priced by ensuring that those producers are paid first and fully in the event of a failure. 240 ILCS 40/25-10(c) (2020).

Another way of achieving adequate safeguards was tackling the reason that grain dealers failed in the first place — speculation losses suffered by the grain dealers that "most often result[ed] from the extensive use of price-later contracts." Mark W. Rasmussen, *Grain Elevator Bankruptcy — Has Illinois Successfully Provided Security to Farmers?*, 1983 S. Ill. U. L.J. 337, 341 (1983). Price later contracts result in losses and insolvency when the grain dealer "sells the grain received from the farmer and speculates with the proceeds." *Id*. at 342; Grain Elevator Task Force Report, 59 ("Delayed Price and Deferred Payment contracts have lessened the amounts of grain stored and increased accounts payable for grain. These have contributed to losses in operating capital and, in some instances, insolvency."); *see also Adams Farm v. Doyle*, 312 Ill. App. 3d 481, 487 (4th Dist. 2000) (recognizing that price later contracts entail risk). Thus, in response, the General Assembly imposed strict requirements in section 10-15(e) to govern price later contracts, such as ensuring that a grain dealer maintain unencumbered assets with a value of at least 90% of the unpaid balance on each price later contract. 240 ILCS 40/10-15(b) (2020).

Given the risk associated with price later contracts and unpriced grain, it does not follow that the General Assembly could have intended for grain to remain unpriced until the parties decide to enter into a belated contract, like

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here, which under the appellate court's decision could be entered into at any time — even months or years after delivery — further pushing out the date of pricing and introducing risk as that grain continues to be sold but unpaid for. Rather, reading section 10-15(e) as pricing grain as a matter of law if parties have not entered into a contract balances the parties' autonomy by allowing them 30 days to enter into a contract with the need to minimize risk to maintain a stable agricultural sector.

In addition, as is evidenced by the belated contract between Miller and SGI, the appellate court's decision allows claims to remain eligible for compensation from the Fund if those parties to enter into a contract long after delivery is complete. Throughout the Grain Code, the General Assembly carefully constructed temporal limitations for claims to be eligible for recovery in the event of a grain dealer failure. *See, e.g.*, 240 ILCS 40/25-10(d) (requiring grain to be priced or delivered within 160 days of failure); 240 ILCS 40/25-10(g) (requiring grain to be delivered or a price later contract to be signed within 365 days of failure). But now, if there is no pricing as a matter of law and if no price later contract is signed within 30 days of delivery, there is no time limit on when a price later contract may be signed for grain already delivered.

As is evidenced here, Miller and SGI entered into a belated contract, meaning one signed after the 30 days prescribed by the legislature, and under the appellate court's decision Miller was able to recover because the pricing

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occurred within a 160-day window under the terms set out in the belated contract. This opens the door for parties to enter into price later contracts far past 30 days after delivery to prolong the length of time the Fund will protect their claims. As a result, more claims, and possibly those that are based on deliveries years ago, will now be eligible to obtain compensation from the Fund so long as the parties eventually sign a price later contract within 365 days of failure and price the grain within 160 days of failure. *See* 240 ILCS 40/25-10(d) (2020) (requiring that the later date of either the price later contract or delivery of the grain be within 365 days of failure for a claimant to have a valid claim). For example, if grain was delivered five years ago, and the parties never entered into a price later contract, under the appellate court's decision, they can enter into a contract today, price the grain tomorrow, and recover from the Fund if the grain dealer fails next week. This is so even though the Grain Code prohibits the execution of subsequent price later contracts to extend the coverage of a claim beyond the original 365 days, 240 ILCS 40/25-10(e) (2020), thus essentially rewarding individuals who did not enter into a timely contract.

This will no doubt lead to a quicker depletion of the finite funds in the Fund in the event of future grain dealer failures and eviscerate the other time limitations for recovery that the legislature implemented in the Grain Code. *See, e.g.*, 240 ILCS 40/25-10(g) (2020). Thus, the only interpretation that both minimizes risk in favor of all players in the grain industry and ensures that

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the resources of the Fund are protected is one where grain is priced as a matter of law if no contract is timely executed.

Finally, although the Grain Code instructs that it is to be interpreted liberally in favor of claimants, 240 ILCS 40/1-5 (2020), this goal does not eliminate the specific requirements set out by the General Assembly. In *Adams Farm*, the appellate court rejected the plaintiff's argument that the Department's position was contrary to producers' interests when interpreting a different provision in the Grain Code regarding the requirements for payout on price-later-contract claims. The court noted that, on the whole, producers have "clearly profited greatly from the [Grain Code] as interpreted by the Director." 312 Ill. App. 3d at 488. Similarly here, on the whole, producers benefit from the Director's interpretation in many respects, including minimizing risk and maintaining adequate resources in the Fund.

D. Even if section 10-15(e) has two reasonable interpretations, the Court should defer to the reasonable interpretation of the Director.

As explained above, the Director's interpretation is the only interpretation that respects the plain language of section 10-15(e). But even if the appellate court's interpretation of the language of section 10-15(e) was a reasonable alternative reading, this Court should defer to the reasonable interpretation of the Director, as the Director, and the Department, are charged with the implementation and enforcement of the Grain Code. *See, e.g.*, 240 ILCS 40/35-5 (2020) (delegating training and educating examiners

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and employees about the Grain Code to the Department); 240 ILCS 40/1-15(12) (2020) (empowering the Director to take any action appropriate to enforce the Grain Code); 240 ILCS 40/30-5(a), (b)(8) (2020) (appointing the Director to head the Grain Insurance Corporation and empowering him to approve payments to claimants from the Fund).

Here, even accepting the appellate court's reasoning, that court at least implicitly seemed to conclude that the language of section 10-15(e) is ambiguous. Although the appellate court described itself as interpreting the "unambiguous" language of section 10-15(e), it also relied on the title of article 10, "Duties and Requirements of Licensees." *Miller*, 2022 IL App (4th) 210204, ¶¶ 24, 30. But resorting to a heading or title in a statute is permissible only if the text is ambiguous. *See Michigan Ave. Nat. Bank v. Cnty. of Cook*, 191 Ill. 2d 493, 506 (2000) (where there is no ambiguity in the language, it is "inappropriate to consider any official titles or headings in construing this statutory provision"). And where a statutory provision is ambiguous, meaning that "it is capable of being understood by reasonably well-informed persons in two or more different ways," *Birkett*, 202 Ill.2d 36 at 46, the agency's reasonable determination of a statute it administers is entitled to deference, *Hadley*, 224 Ill. 2d at 370-71. Thus, at a minimum, this Court should defer to the Director's reasonable interpretation.

Indeed, it is settled that a "court will not substitute its own construction of a statutory provision for a reasonable interpretation adopted by the agency

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charged with the statute's administration." *Ill. Bell Tel. Co. v. Ill. Com. Comm'n*, 362 Ill. App. 3d 652, 657 (citing *Church v. State*, 164 Ill.2d 153, 162 (1995)). This is so because "agencies make informed judgments on the issues based upon their experience and expertise and serve as an informed source for ascertaining the legislature's intent." *Hartney Fuel Oil Co.*, 2013 IL 115130, ¶ 16. Here, as noted, the General Assembly has empowered the Director with substantial authority in the grain industry that qualifies him as an expert in this field. *See, e.g.*, 240 ILCS 40/35-5 (2020); 240 ILCS 40/1-15(12) (2020); 240 ILCS 40/30-5(a), (b)(8) (2020); *see also Nat. Res. Def. Council v. Pollution Control Bd.*, 2015 IL App (4th) 140644, ¶ 19.

The Director's interpretation of subsection 10-15(e) as automatically pricing the grain on the business day following the 30th day after delivery, A26, showcases that expertise because it promotes the goals of the Grain Code, as explained *supra* pp. 32-37. Thus, to the extent that Miller's interpretation, adopted by the appellate court, was an alternative reasonable interpretation, the Court should defer to the reasonable interpretation of the Director that the grain is priced as a matter of law if no contract is signed 30 days after delivery.

E. The Director also correctly determined that, in the alternative, Contract 211 was not part of Contract 215, and therefore, did not qualify for compensation.

Separate from the issue of when the grain was priced, the Director also correctly determined that Contract 211 "was not rolled into" Contract 215. A26. The appellate court did not reach this issue, but in affirming the ALJ's

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nonfinal determination — problematic for reasons discussed *infra* pp. 41-43 — the court implicitly reversed the Director's determination on this issue without providing any reasoning. *See Miller*, 2022 IL App (4th) 210204, ¶ 37. Thus, even if the Court were to agree with the appellate court's interpretation of section 10-15(e), this Court should reinstate that portion of the Director's decision.

The Director correctly determined that the 1,376.09 bushels of grain delivered pursuant to Contract 211 were not "rolled into" Contract 215. A26. Parties may in certain circumstances agree to a "substituted contract," meaning one where the duty in the original contract is discharged in exchange for a new duty. *See* Restatement (Second) of Contracts § 279 (1981). Here, Miller argued throughout the administrative proceeding that the grain to be priced under Contract 211 was "rolled into" Contract 215 to be priced with that grain. *See* A26. But the Director properly determined that there was no notation in Contract 215 that it was subsuming Contract 211. *Id*. Moreover, because the Grain Code specifically disallows the use of subsequent price later contracts to extend coverage of a claim, 240 ILCS 40/25-10(e) (2020), any such "rolling over" would not allow Miller to recover. Since Contract 211 was executed over a year before failure, C328 (signed on October 10, 2015), C77 (failure occurred on November 1, 2016), Miller could not recover for this grain. 240 ILCS 40/25-10(g)(2) (2020). This Court should thus uphold this part of the

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Director's decision regardless of how it resolves the question regarding the proper interpretation of section 10-15(e).

F. If this Court disagrees with the Director's interpretation of section 10-15(e), it should remand to the Department to determine when the grain was priced as there is no final administrative decision on this issue.

For the reasons stated above, this Court should reverse the appellate court and uphold the Director's decision interpreting section 10-15(e) as pricing grain as a matter of law, concluding that Miller is not entitled to compensation. If, however, the Court agrees with the appellate court's interpretation, then a remand to the Department is necessary to determine when the grain was priced if it was not priced automatically as a matter of law on February 26, 2016, because there would be no final administrative decision on this issue.

The Director's decision granted the Department's petition for reconsideration on the narrow legal issue of whether section 10-15(e) means that grain was priced as a matter of law on February 26, 2016 — the next business day after 30 days of delivery — in accordance with the Grain Code. A26-28. The Director also determined, as discussed above, that Contract 211 was not rolled into Contract 215 and noted that this conclusion was not necessary as none of the grain in Contract 215 was priced within 160 days of failure, barring all recovery. A26. The Director did not, however, present any alternate determination with respect to when the grain would be priced if there were no automatic pricing under section 10-15(e). *See* A23-28.

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Because the appellate court disagreed with the Director's interpretation, it reversed the Director's decision. *Miller*, 2022 IL App (4th) 210204, ¶ 37. And the appellate court also purported to "affirm the decision of the administrative law judge," *id*. — a determination that was made earlier and was not final, *see* 8 Ill. Admin. Code § 1.77(g) ("The Director's decision on a petition for reconsideration or stay shall be the final decision of the Department."); *Int'l Harvester v. Indus. Comm'n*, 71 Ill. 2d 180, 187 (1978) (timely motion for rehearing "prevents the original decision or order of the agency from being final and appealable"). But because the ALJ's decision was not a final administrative decision, the appellate court did not have the power to affirm it. *See Biscan v. Vill. Of Melrose Park Bd. Of Fire & Police Comm'rs*, 277 Ill. App. 3d 844, 849 (1st Dist. 1996) ("the Administrative Review Act empowers a court of review to either affirm or reverse a [final administrative decision]. No more than that.").

Thus, while the appellate court had the power to reverse the Director's decision that the grain was priced on February 26, 2016, the court did not have the power to "affirm" the ALJ's decision. To the extent that the court purported to do so, it improperly endorsed reasoning that was not subject to administrative review and exceeded the scope of the court's review. Therefore, if this Court were to agree with the appellate court's interpretation of section 10-15(e), it should remand to the Department to determine when the grain

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was priced with instructions to exclude the 1,376.09 bushels of grain associated with Contract 211 from any recovery.

III. The administrative proceeding comported with the procedural requirements of the Grain Code and with procedural due process.

The appellate court did not reach the procedural issues raised by Miller, and to the extent Miller continues to pursue these arguments in this Court, they were properly rejected by the circuit court. A15-22. First, despite Miller's claims to the contrary, there is no basis upon which the Department could be bound by the parties' email correspondence. Second, the Department timely denied Miller's claim under the Grain Code. Third, the Director had the authority to grant the Department's petition for reconsideration. Fourth, Miller was properly heard at the administrative level. The Director's decision that Miller was not entitled to compensation was premised on his interpretation of section 10-15(e) — a legal issue that Miller had ample opportunity to brief and argue. The administrative decision thus comported with due process and the Grain Code.

A. The Department was not bound by statements made in email correspondence.

Miller argued in the appellate court that the Department should be bound by its purported determination that he had a valid claim in email communications after the case had been referred to the ALJ. Miller Br. 24-26. The email that Miller relies on for this point was part of a discussion of the potential worth of Miller's claim — not a final and binding legal determination

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that Miller had a valid claim for compensation. C88. By the Grain Code's own definition, a "valid claim" only exists when the Department has determined that it meets the required criteria and when that determination is not subject to further administrative review or appeal. 240 ILCS 40/1-10 (2020). An email between the parties does not constitute a decision that is subject to further administrative review, particularly when Miller's claim was later reviewed by the ALJ and then the Director. Miller's argument would mean that any statement made by an agency in the course of discussing a claim would constitute a final agency determination. *But cf*. 5 ILCS 100/10-50(b) (2020) (requiring final agency orders to state that they are final).

Moreover, the ALJ, the Director, and the circuit court were all correct in determining that the Department could not be bound by email statements that Miller may have been entitled to some compensation, *see* C86-89, even if those could be construed as a contractual offer because Miller never accepted but instead counter-offered, such that the parties never came to an agreement. *Id*.; C43, C93-9; *see Whitelaw v. Brady*, 3 Ill. 2d 583, 589 (1954) ("It is elementary that in order to constitute a contract by offer and acceptance, the acceptance must conform exactly to the offer."). In addition, even if the Department had made an offer that was accepted, which was not the case here, the Department does not have the authority to act outside the Grain Code. Thus, any such payment on a claim that did not meet the Code's criteria would be contrary to law. C43. And to the extent Miller is arguing that he is entitled

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to relief based on a quasi-contract promissory estoppel theory, not only has he not demonstrated any reliance, but also such arguments are disfavored against the State. *Hickey v. Illinois Cent. R. Co.*, 35 Ill. 2d 427, 447 (1966) (doctrine of estoppel does not apply to State acting in its governmental capacity).

B. The Department timely denied Miller's claim under the Grain Code.

Miller also relied in the appellate court on a communication from the Department — the letter from the Department explaining that the grain he delivered to SGI was priced 30 days after delivery under section 10-15(e), C96-97 — to argue that the Department did not timely determine his claim under the Grain Code. Miller Br. 29. Not only was this argument forfeited as it was never raised at the administrative level, *see Carpetland U.S.A., Inc. v. Ill. Dep't of Emp. Sec.*, 201 Ill. 2d 351, 396-97 (2002), but it also fails to take into account that the Department determined that Miller's claim was invalid long before this letter was sent. The Grain Code requires that the Department determine the validity of each claim within 120 days of the date of failure. 240 ILCS 40/25-5(f) (2020). Here, the Department notified Miller that he did not have a compensable claim through the Department's determination on February 7, 2017 — just under 100 days after the November 1, 2016 failure. C77. As that original denial letter informed Miller, he could have challenged the determination, *id.*, which he did, C79. The later letter from the Department's general counsel merely reiterated the Department's earlier

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determination that Miller did not have a valid claim, and it does not fall within the Grain Code's 120-day requirement.

C. The Director had the authority to reconsider the ALJ's decision.

Miller's argument to the appellate court that the Director had no authority to reconsider the ALJ's decision was also incorrect. Miller Br. 31-32. As an initial matter, Miller never filed an opposition to the Department's petition for reconsideration challenging the Director's authority to act, forfeiting this argument. *See Carpetland U.S.A.*, 201 Ill. 2d at 396-97. Moreover, the Department's administrative regulations clearly allow for a petition for reconsideration to be filed with the Director, 8 Ill. Admin. Code § 1.112, and further state that the "Director's decision on the matter which was reconsidered or stayed shall be the final administrative decision of the agency," 8 Ill. Admin. Code § 1.124. Contrary to Miller's position in the appellate court that there was no basis to grant the petition to reconsider, Miller Br. 28-29, the ALJ erroneously based his decision on the premise that SGI was a licensed warehouseman. As a result, the Department's reconsideration petition properly explained that the ALJ's decision rested on legal error, raising an issue that had not been properly considered. *See* 8 Ill. Admin. Code § 1.126 (requiring the Director to grant a petition for reconsideration where the "petition demonstrates that . . . views contained in the administrative record were not previously or adequately considered by" the ALJ).

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D. The Department's consideration of documentary evidence and briefing satisfied due process.

Finally, though Miller claimed before the appellate court that the Department violated due process by not holding a hearing on the merits of his claim, Miller Br. 30-32, there was sufficient consideration of all the evidence and arguments by the Director. Procedural due process is a flexible concept and "requires only such procedural protections as fundamental principles of justice and the particular situation demand." *Abrahamson v. Ill. Dep't of Prof. Regul.*, 153 Ill. 2d 76, 92 (1992). Thus, due process does not require that the procedural protections in an administrative proceeding mirror those in a judicial proceeding. *Id*. Due process is instead "satisfied by a form of procedure that is suitable and proper to the nature of the determination to be made and conforms to fundamental principles of justice." *Telcser v. Holzman*, 31 Ill. 2d 332, 339 (1964). Here, Miller was properly heard through his paper submissions and accompanying documents provided to the ALJ. *E.g.*, C82-105, C115-22. Moreover, when the Department sought reconsideration based on section 10-15(e), Miller, who was at all times represented by counsel, did not respond to the Department's petition for reconsideration or assert at that time that a hearing was necessary. In any event, he has had sufficient opportunity to brief and argue the proper interpretation of section 10-15(e) at both the administrative level as well as through administrative review.

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CONCLUSION

For these reasons, Defendant-Appellant Illinois Department of Agriculture requests that this Court reverse the appellate court's judgment, thereby affirming the Director's decision. In the alternative, this Court should remand to the Department to determine when the grain was priced, with instructions to exclude recovery for the grain in Contract 215 that was also a part of Contract 211.

Respectfully submitted,

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April 19, 2023

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the brief under Rule 342(a), is 12,001 words.

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Appendix

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2022 IL App (4th) 210204

NO. 4-21-0204

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 26, 2022
Carla Bender
4th District Appellate
Court, IL

ROBERT MILLER, Plaintiff-Appellant, v. THE DEPARTMENT OF AGRICULTURE, Defendant-Appellee.	))))))))	Appeal from the Circuit Court of Ford County No. 19MR16 Honorable Matthew J. Fitton, Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court, with opinion.
Justices DeArmond and Steigmann concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, Robert Miller, appeals the circuit court's order that affirmed the decision of the director of the Department of Agriculture (Department), denying his claim for compensation from the Grain Code (240 ILCS 40/1-1 *et seq.* (West 2016)). Plaintiff contends, in part, the circuit court and the director erroneously interpreted section 10-15(e) of the Grain Code (*id.* § 10-15(e)) as triggering the automatic pricing of grain sold under a price later contract and the resulting placement of his claim outside the protections of the Grain Code. We agree with plaintiff and reverse.

¶ 2 I. BACKGROUND

¶ 3 The Grain Code's main purpose is "to promote the State's welfare by improving

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the economic stability of agriculture through the existence of the Illinois Grain Insurance Fund." *Id.* § 1-5. The Grain Insurance Fund affords protections to grain producers when licensed grain dealers, those in the business of purchasing grain from producers, fail. *Id.* When such a failure occurs, producers may seek compensation from the Grain Insurance Fund by filing a claim with the Department. See *id.* § 25-10. The protections of the Grain Insurance Fund are not limitless. There are deadlines that must be strictly enforced. See, *e.g.*, *id.* § 25-10(d).

¶ 4 Plaintiff is a grain producer who entered multiple "price later contracts" with SGI Agri-Marketing, LLC (SGI), for the sale of grain. One such contract is Price Later Contract 215, the contract that is the basis for plaintiff's claim. Under the Grain Code, a " '[p]rice later contract' " is an agreement to sell grain where the purchase price will be later determined pursuant to a formula in the contract. *Id.* § 1-10. In this case, Price Later Contract 215 is a preprinted form. It was fully executed on March 15, 2016, after the grain had been delivered. Handwritten in the form is plaintiff's name as the seller and the number of bushels of grain involved: 15,508.25. A box is checked showing the grain was delivered between the handwritten dates of September 25, 2015, and January 26, 2016. According to Price Later Contract 215, the parties agreed to the means by which the purchase price would be determined. After this line, the box before "Basis" is checked, and plaintiff agreed to sell the grain to SGI for the contract price of July 2016 futures at the Chicago Board of Trade (CBOT), with some price variance for grain delivered on different dates, on any business day between the date of the contract and June 25, 2016. Under the terms of the contract, plaintiff, as the seller, was to select the "the contract month price."

¶ 5 On the preprinted form, after the portion where the parties could write in the agreed upon terms, appears a section called "PRICE LATER DISCLOSURES—SELLER IS HEREBY CAUTIONED." Under the title appears in parentheses and italics: "These disclosures are

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summaries of the Illinois Grain Code and are not intended to fully advise you of your legal rights and liabilities. Please refer to the Illinois Grain Code for the actual provisions." These disclosures include: "The contract must be signed by both parties within 30 days after the last date of delivery or the grain will be priced on the next available business day at the closing price on that day" and "[w]ithin 5 business days of Seller selecting a price for all or any part of the grain covered by a price later contract, the Buyer shall mail to the Seller a confirmation indicating the price selected."

¶ 6 On May 18, 2016, SGI sent a document entitled "Purchase Confirmation" to plaintiff, detailing the pricing of 15,508 bushels of grain. At the bottom of the purchase confirmation was a preprinted statement directing plaintiff to sign and return a copy immediately. Plaintiff signed the Purchase Confirmation on June 6, 2016.

¶ 7 On November 1, 2016, the Department determined a failure of SGI had occurred. The Department began the process of resolving SGI's affairs according to the Grain Code. SGI's grain-dealer license was revoked. On November 17, 2016, the Department's Bureau of Warehouses (Bureau) sent plaintiff a letter notifying him of SGI's failure.

¶ 8 On November 22, 2016, plaintiff filed a claim for reimbursement from the Grain Insurance Fund. Plaintiff sought compensation for 17,366.81 bushels of grain, which included grain sold pursuant to another price later contract not subject to this appeal. Because the grain was sold under a price later contract, price later contract 215, section 25-10(d) of the Grain Code applies to plaintiff's claim. See *id.* § 25-10(d). Section 25-10(d) allows a valid claim to be paid at 85% of its value if the grain was delivered or priced within 160 days of the failure *and* the contract was executed or the grain delivered not more than 365 days before the failure. *Id.* Regarding plaintiff's claim, the relevant dates are as follows: (1) November 1, 2016, the date of SGI's failure, (2) May 25, 2016, 160 days before SGI's failure, and (3) November 2, 2015, 365 days before the failure.

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¶ 9 The Bureau, on February 7, 2017, denied plaintiff's claim, finding the grain sold but not paid for within 160 days of the failure. One month later, plaintiff served notice to the Department of a request for a hearing, maintaining the grain was not sold more than 160 days before the failure. The matter was assigned to the Bureau of Administrative Hearings of the Department of Central Management Services for adjudication. An administrative law judge (ALJ) was appointed.

¶ 10 The record contains proof of multiple communications between plaintiff and the Department's counsel in November and December 2017 regarding his claim. At one point, the Department's counsel agreed plaintiff presented a valid claim. Plaintiff disputed the amount owed, and the matter was not resolved.

¶ 11 By letter dated December 11, 2017, general counsel for the Department stated he concluded plaintiff's claim must be denied. General counsel informed plaintiff, as a matter of law under section 10-15(e) of the Grain Code, the grain was priced 30 days after delivery and this date placed his claim outside the requisite 160-day deadline. Section 10-15(e) provides the following:

> "Subject to subsection (f) of this Section, if a price later contract is not signed by all parties within 30 days of the last date of delivery of grain intended to be sold by price later contract, then the grain intended to be sold by price later contract shall be priced on the next business day after 30 days from the last date of delivery of grain intended to be sold by price later contract at the market price of the grain at the close of the next business day after the 29th day. When the grain is priced under this subsection, the grain dealer shall send

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> notice to the seller of the grain within 10 days. The notice shall contain the number of bushels sold, the price per bushel, all applicable discounts, the net proceeds, and a notice that states that the Grain Insurance Fund shall provide protection for a period of only 160 days from the date of pricing of the grain." *Id.* § 10-15(e).

¶ 12 The matter proceeded to the ALJ. Before the ALJ, as here, the parties disputed the date the grain was priced pursuant to price later contract 215. Plaintiff argued the grain was priced on June 6, 2016, when he signed the purchase confirmation. The Department countered the grain was automatically priced under section 10-15(e) on February 26, 2016, 30 days after the last grain delivery occurred as no price had been set.

¶ 13 The ALJ's analysis regarding the date of the pricing began by summarizing the parties' arguments. The ALJ then considered whether the parties intended to create a price later contract and, after considering the history of the transactions between SGI and plaintiff, as well as the terms of the contract, found they had so intended and had done so. The ALJ turned to the issue of pricing and found pricing did not occur on February 26, 2016, as the Department asserted: "[d]etermining that the intent was to enter into a price later contract, the pricing does not occur on February 26, 2016; rather, it occurs at a later date."

¶ 14 Upon concluding the pricing did not occur on February 26, 2016, the ALJ found the price was set within 160 days of SGI's failure and plaintiff was entitled to compensation from the Grain Insurance Fund. The ALJ reasoned pricing was complete on one of two dates, both after May 25, 2016. The first date, June 6, 2019, was the date plaintiff signed the purchase confirmation. The second date, May 28, 2016, is the date of the expiration of the Uniform Commercial Code's 10-day notice period when a party may object to a written confirmation. See 810 ILCS 5/2-201(2)

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(West 2016).

¶ 15 In July 2018, the Department petitioned the director for reconsideration of the ALJ's July 23, 2018, order. Plaintiff did not file a response.

¶ 16 In its October 2018 decision, the director observed, before the ALJ, both sides submitted briefs in support of their arguments. The director observed no formal hearing was held. The director then found the ALJ order improperly relied on subsection (f) in its analysis of plaintiff's claim. Subsection (f), according to the director, applies to warehousemen, and SGI was not licensed as a warehouseman.

¶ 17 The director denied plaintiff's claim, concluding neither delivery nor pricing occurred within 160 days of SGI's failure. The director determined, because the parties failed to enter into a contract until March 15, 2016, the grain had been priced as a matter of law on February 26, 2016, 30 days after the last grain subject to price later contract 215, had been delivered. The director reversed the order of the ALJ and found plaintiff was not entitled to compensation from the Grain Insurance Fund.

¶ 18 Plaintiff appealed to the circuit court, which affirmed the order of the director. The court found pricing occurred on February 26, 2016, under section 10-15(e) of the Grain Code.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Although plaintiff also raises procedural arguments, the primary issue on appeal is whether the Grain Code, section 10-15(e) in particular, sets a pricing date as a matter of law when the parties do not enter a price later contract within 30 days of delivery. This is a matter of statutory interpretation, which is subject to *de novo* review. *Marsh v. Sandstone North, LLC*, 2020 IL App (4th) 190314, ¶ 63, 179 N.E.3d 402.

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¶ 22 In interpreting a statute, our primary objective is to ascertain and give effect to the legislature's intent. *Id.* The most reliable indicator of that intent is the language of the statute. *Vance v. Joyner*, 2019 IL App (4th) 190136, ¶ 52, 146 N.E.3d 285. We consider the statute as a whole and do not construe words in isolation but in light of the other relevant provisions of the statute. *Marsh*, 2020 IL App (4th) 190314, ¶ 63. In this task, " '[n]o part of a statute should be rendered meaningless or superfluous.' " *Id.* (quoting *Van Dyke v. White*, 2019 IL 121452, ¶ 46, 131 N.E.3d 511). The statute at issue is part of the Grain Code, which is to "be liberally construed and liberally administered in favor of claimants." 240 ILCS 40/1-5 (West 2016).

¶ 23 In this case, the statute at issue is one administered by the Department, an administrative agency. This court on *de novo* review will defer to an agency's interpretation of a statute unless the interpretation is erroneous or unreasonable or the interpretation conflicts with the statute. *Medponics Illinois, LLC v. Department of Agriculture*, 2021 IL 125443, ¶ 31.

¶ 24 We turn to the language of the statute. The subsection at issue here is part of section 10-15 of the Grain Code, which is titled "Price later contracts." 240 ILCS 40/10-15 (West 2016). Section 10-15, "Price later contracts," appears within article 10 of the Grain Code, which is titled "Duties and Requirements of Licensees." 240 ILCS 40/art. 10 (West 2016). By definition, a licensee includes grain dealers and warehousemen, not producers. See *id.* § 1-10. Section 10-15 begins by mandating price later contracts contain provisions prescribed or authorized by the Department. *Id.* § 10-15(a). It then provides for the form, creation, and retention of price later contracts for only "licensed grain dealer[s]." See *id.* § 10-15(a), (h). Section 10-15 further mandates grain dealers who enter price later contracts maintain a specific number of assets when compared to the unpaid balance on obligations for grain purchased by price later contracts. See *id.* § 10-15(b).

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¶ 25 Within this section of grain-dealer obligations, subsection (e) provides the following:

> "Subject to subsection (f) of this Section, if a price later contract is not signed by all parties within 30 days of the last date of delivery of grain intended to be sold by price later contract, then the grain intended to be sold by price later contract *shall be priced* on the next business day after 30 days from the last date of delivery of grain intended to be sold by price later contract at the market price of the grain at the close of the next business day after the 29th day. When the grain is priced under this subsection, the grain dealer shall send notice to the seller of the grain within 10 days. The notice shall contain the number of bushels sold, the price per bushel, all applicable discounts, the net proceeds, and a notice that states that the Grain Insurance Fund shall provide protection for a period of only 160 days from the date of pricing of the grain." (Emphasis added.) *Id.* § 10-15(e).

We note subsection (f), to which subsection (e) refers, is not applicable to this case, as it applies to grain stored with a warehouseman (see *id.* § 10-15(f)) and there is no evidence the grain at issue was stored in that manner.

¶ 26 Plaintiff argues nothing within the language of subsection (e) indicates the pricing occurs automatically. Plaintiff emphasizes the word "be" in "shall be priced" as requiring an actor and contends only dealers have authority under the Grain Code to prepare the price later contracts and comply with section 10-15's notice requirements. Plaintiff concludes simply because the law

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required SGI to price the grain does not mean SGI did so.

¶ 27 The Department counters the language of the Grain Code is clear: if the parties fail to enter into a contract within 30 days of the last delivery, the grain "shall be priced on the next business day." *Id.* § 10-15(e). The Department contends the statute does not indicate who prices the grain and, therefore, the plain meaning of the provision is that the grain is priced automatically on the thirtieth day. The Department argues this reading is consistent with the rest of the Grain Code that states when a particular entity, like a grain dealer or producer, is mandated to do something but remains silent to the actor, an event occurs automatically. The Department maintains the rest of the Grain Code states "explicitly" when a particular entity is mandated to do something but stays silent as to the actor when an event occurs automatically.

¶ 28 In subsection (e), the legislature used the words "shall be priced." This admonition is in passive voice, meaning the subject of the sentence must act on the object of the sentence. See *Active and Passive Voice*, Am. Psychological Ass'n, https://apastyle.apa.org/style-grammar-guidelines/grammar/active-passive-voice (last visited Apr. 19, 2022) [https://perma.cc/Z2NA-NSAY]. In this case, grain is the object of the sentence. An entity, unnamed in the same sentence in which "shall be priced" appears, is the subject directed to perform the mandated task of pricing the grain. To "price" means "to set a price on" or "to find out the price of." Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/price (last visited Apr. 19, 2022) [https://perma.cc/42ZF-6H9M]. Thus, the plain language of the statute dictates an individual or entity shall set a price on or find out the price of the grain.

¶ 29 Contrary to the Department's contention, the absence of an identified person or entity in the same sentence as "shall be priced" does not indicate the pricing occurs automatically. Within section 10-15, there is language establishing when an event occurs automatically. In

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subsection (d), for example, the legislature dictates "[t]itle to grain sold by price later contract *shall transfer* to a grain dealer at the time of delivery of the grain." (Emphasis added.) 240 ILCS 40/10-15(d) (West 2016); see also *id.* § 1-10 (under the definition of " '[p]rice later contract,' " "Title to the grain passes to the grain dealer at the time of delivery."). The language does not include passive language like "shall be transferred." Instead, title actively transfers without further action. Interestingly, in this situation where the transfer is automatic, there is no requirement notice of this transfer be provided. Had the legislature intended pricing to occur automatically in subsection (e), similar language would have been used: "the grain intended to be sold by price later contract *shall price* on the next business day" or "the grain intended to be sold by price later contract *prices* on the next business day."

¶ 30 Further, we find the context of the "shall be priced" mandate establishes the legislature intended the grain dealer to price the grain according to subsection (e)'s terms. As shown above, subsection (e) appears in the article of the Grain Code specifying duties and requirements of grain dealers. In addition, the sentence following "shall be priced" explicitly directs the grain dealer to provide notice to the seller or producer so that the producer is aware of the pricing and can protect itself accordingly. See *id.* § 10-15(e) ("When the grain is priced under this subsection, the grain dealer shall send notice to the seller" that "states that the Grain Insurance Fund shall provide protection for a period of only 160 days from the date of pricing of the grain."). If the pricing was meant to be automatic, like the transfer of title, no notice would have been necessary. Plainly, the legislature intended the grain dealer to act by setting or determining the price and then inform the producer or seller it had done so.

¶ 31 In its brief, the Department compares subsection (e)'s "shall be priced" language to the Code of Civil Procedure's now-deemed-unconstitutional language "recovery of non-economic

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damages shall be limited to $500,000 per plaintiff" (735 ILCS 5/2-1115.1 (West 1996)), ruled unconstitutional in *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 406, 669 N.E.2d 1057, 1076 (1997). The Department argues the statutory cap of section 1115.1 occurred automatically as a matter of law without need for more action by the court. We disagree with that conclusion. Initially, we note there is no analysis of the meaning of "shall be limited" in the case cited by the Department. See *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 930 N.E.2d 895 (2010). In addition, the use of "shall be limited" is passive voice, requiring the circuit court or trier of fact to limit the amount of damages awarded. While the cap may have been "automatic" in that it applied to civil cases, an award of damages did not "automatically occur." According to section 1115.1, the trier of fact, or the court in its directions to the jury, had to limit those damages.

¶ 32 The Department further argues plaintiff's reading of subsection (e) would render the mandatory pricing requirement meaningless as parties could enter price later contracts well after the deliveries, as here, with no consequence. We are not persuaded. Section 10-15 sets forth a penalty to ensure grain dealers comply with the Grain Code. In subsection (j), a grain dealer that does not comply with the requirements of section 10-15, which includes subsection (e), is subject to suspension of the privilege of purchasing grain through price later contracts. 240 ILCS 40/10-15(j) (West 2016) ("Failure to comply with the requirements of this Section may result in suspension of the privilege to purchase grain by price later contract for up to one year."). Grain dealers that do not comply with subsection (e)'s mandate to price the grain and give notice to the producer are subject to punishment by the Department. This provides sufficient reason for grain dealers not to engage in the bad-faith negotiations or tactics the Department professes to fear.

¶ 33 The Department's only remaining complaint regarding the ALJ decision is the ALJ's references to subsection (f) in its analysis of plaintiff's claim. The Department contends the

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analysis was improper as subsection (f) involves warehousemen and SGI was not a warehouseman as defined by the Grain Code.

¶ 34 Our review of the record shows the ALJ considered subsection (f) only on the issue of when price later contract 215 was signed:

> "Application of Section 10-15(f) of the Code concludes that grain delivered after September 25, 2015, through March 15, 2016, the date of [price later contract 215], was in the possession of SGI as 'remaining in storage and not deemed to be sold by price later contract' until March 15, 2016, the date of Claimant's execution of [price later contract 215]. Therefore, the grain was sold on March 15, 2016, but priced according to a traditional mechanism for such contracts."

This determination by the ALJ had no effect on the ultimate question here—whether the grain was priced within the 160-day period before SGI's failure. In fact, even the Department agrees the contract was signed on March 15, 2016. The only nonprocedural issue in this appeal is the question of whether section 10-15(e) triggered an automatic pricing of the grain sold by plaintiff to SGI under price later contract 215. There is no indication subsection (f) had any effect on the ALJ's decision on when pricing occurred.

¶ 35 The Department's interpretation conflicts with the unambiguous language of subsection (e), meaning we will not defer to it. See *Medponics Illinois*, 2021 IL 125443, ¶ 31. Having found plaintiff prevails on his substantive claim, we need not address his procedural arguments.

¶ 36 III. CONCLUSION

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¶ 37 We reverse the circuit court's judgment affirming the Department's decision and affirm the decision of the administrative law judge.

¶ 38 Reversed.

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No. 4-21-0204

Cite as:	*Miller v. Department of Agriculture*, 2022 IL App (4th) 210204
Decision Under Review:	Appeal from the Circuit Court of Ford County, No. 19-MR-16; the Hon. Matthew J. Fitton, Judge, presiding.
Attorneys for Appellant:	Timothy B. Cantlin, of Cantlin Law Firm, of Ottawa, for appellant.
Attorneys for Appellee:	Kwame Raoul, Attorney General, of Chicago (Jane Elinor Notz, Solicitor General, and Nadine J. Wichern and Anna W. Gottlieb, Assistant Attorneys General, of counsel), for appellee.

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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF FORD

ROBERT MILLER, Plaintiff	)	
Vs.	)	Case: 19-MR-16
ILLINOIS DEPARTMENT OF AGRICULTURE, Defendant	)	

FILED IN THE CIRCUIT COURT
OF FORD COUNTY ILLINOIS
MAR 15 2021
Kamalen Johnson Anderson
CLERK

ORDER

The Court has reviewed the filings in Ford County Case 19-MR-16. The Court has considered the relevant facts including the Background of this case. The Court considers the appropriate statutes and arguments made by the parties including all filings made by the parties, arguments made as well as Exhibits and the Appropriate Statutes referenced by the Parties. The fact that the Court did not expressly mention an argument, exhibit, filing does not mean it was not considered in reaching this decision. The Court has taken great interest in reading the Claimant Robert Miller's Brief For Administrative Review Regarding The Illinois Department Of Agriculture Claim Determination.

The facts of this case have been well documented by the Parties so the Court will not rehash the factors which have led the parties to Court.

The Brief filed on behalf of Mr. Miller For Administrative Review Regarding the Illinois Department of Agriculture Claim Determination. The Argument made on behalf of the Claimant Robert Miller. Claimant's argument begins as follows: "The primary purpose of the Grain Code is to, "promote the State's welfare by improving the economic stability of agriculture through the existence of the Illinois Grain Insurance Fund in order to protect producers in the event of the failure of a licensed grain dealer or licensed warehouseman and to ensure the existence of an adequate resource so that persons holding valid claims may be compensated for losses

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occasioned by the failure of a licensed grain dealer or licensed warehouseman." Agreement in Claimant Robert Miller's Brief for Administrative Review. P. 8 "To that end this Code shall liberally construed and liberally administered in favor of claimants." 240 ILCS 40/ 1-5.

Claimant's Argument state's IDOA (IL Dept of Agriculture) Denial of 15,508.25 Bushels of Grain is contrary to Grain Code. Claimant argues: (1) Pricing of the grain had to occur within 160 days before the date of failure, and (2) Date of delivery of the grain must not be more than 365 days before date of failure. 240 ILCS 40/25-10 (d). Argument made on behalf of the Claimant states that he satisfied both requirements and is entitled to compensation under the Grain Code for 15,508.25 bushels of grain representing $83,210.18. At 85% this amount, $70,728.65. Claimant argues delivery was within 365 days of failure and pricing was within 160 days at failure.

Claimant's brief argues that the IDOA is bound by its determination that the Claimant had a Valid claim under the Grain Code and that the IDOA violated the Grain Code when it reevaluated the claim outside the120 day window.

On July 31, 2018, the IDOA filed its Petition for Reconsideration of the Administrative Law Judge's (ALJ) decision.

On October 26, 2018, the Director of the IDOA issued a ruling on IDOA's Petition. The Director granted the IDOA Petition and reversed the ALJ's decision and ruled that the Claimant is not entitled to compensation from the fund. In Defendant's Brief In Support Of The Administrative Decision, Five points made by the Director are stated: "First, the ALJ's Order relied on the fact that 240 ILCS 40/10-15 (e) is subject to subsection (f), which provides "if grain is in the storage with a warehouseman." The ALJ misapplies 240 ILCS 40/10-15 (f) to mistakenly find that the price later contract between Plaintiff and SGI was effective on March 15,2016. However, the IDOA's Petition correctly pointed out that subsection (f) is irrelevant because SGI was only licensed as a grain dealer, not a warehouseman. Second, SGI was licensed by the IDOA as a grain dealer only, not a warehouseman, and therefore could not store any grain for Plaintiff. Third, because the last date of delivery was January 26, 2016, the grain was priced on February 26, 2016, pursuant to 240 ILCS 40/10-15 (e). Forth, the IDOA's Petition demonstrated relevant data, information, on views specifically contained in the administrative record that were not previously or adequately considered by the ALJ. Fifth, granting the IDOA's Petition was not outweighed by a preponderance of the evidence.

The Court finds the Argument furthered in Defendant's Brief In Support of the Administrative Decision very compelling and finds the argument persuasive. The Court includes that argument in its entirety.

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ARGUMENT

The IDOA requests that this Court affirm the Final Administrative Decision for two reasons. *First*, the IDOA validly denied Plaintiff compensation from the Fund because neither delivery nor pricing occurred within 160 days of SGI's failure. *Second*, the arguments raised in Plaintiff's Brief in Support of his Complaint for Administrative Review are unpersuasive.

I. The IDOA Validly Denied Plaintiff Compensation From the Fund Because Neither Delivery Nor Pricing Occurred Within 160 Days of SGI's Failure.

Under Illinois law, the IDOA provides compensation for claimants if the later date of completion of delivery or pricing of the grain was within 160 days of the date of failure. 240 ILCS 40/25-10(d). Further, Illinois law provides that claims where both the date of completion or delivery and the date of pricing of the grain are in excess of 160 days of the failure are barred and disallowed in their entirety and shall not be entitled to any recovery. 240 ILCS 40/25-10(g). *First*, the analysis identifies when completion of delivery took place and when completion of pricing took place. *Second*, the analysis identifies which of those events took place last and determines whether that date was within 160 days before the date of failure, which here is November 1, 2016.

Under 240 ILCS 40/25-10(d) and 240 ILCS 40/25-10(g), the IDOA validly denied Plaintiff compensation from the Fund for his November 22, 2016 claim because neither delivery nor pricing occurred within 160 days of SGI's failure. Because SGI's date of failure was November 1, 2016, the 160-day cutoff date for a claim of compensation was May 25, 2016 (160 days before November 1, 2016). The date of delivery and/or date of purchase was for Plaintiff's grain was May 18, 2016. Thus, Plaintiff's claim was one week outside of the statutory 160-day cutoff and was properly denied compensation from the Fund.

Further, Plaintiff delivered 15,508.25 bushels of corn to SGI. On January 26, 2016, Plaintiff last delivered the corn grain to SGI, which is when delivery was completed. On March 15, 2016, Plaintiff and SGI attempted to sign a price later contract for these bushels. However, Illinois law provides as follows:

> if a price later contract is not signed by all parties within 30 days of the last date of delivery of grain intended to be sold by price later contract, then the grain intended to be sold by price later contract shall be priced on the next business day after 30 days from the last date of delivery of grain.

240 ILCS 40/10-15(e).

Since the price later contract was not signed by either party within 30 days of the date of delivery, pricing was completed on February 26, 2016, pursuant to 240 ILCS 40/10-15(e). Under 240 ILCS 40/25-10(d), the later date of completion of delivery or pricing of Plaintiff's bushels of corn was February 26,2016, which is not within 160 days before SGI's November 1, 2016 date of failure. Thus, Plaintiff's claim for the 15,508.25 bushels of corn is barred and disallowed in entirety and is not entitled to recovery, pursuant to 240 ILCS 40/25-10(e), (g).

Additionally, SGI's records include price later contract Nos. 211 and 215. Contract No. 211 was for corn delivered on September 25, 2015 and priced on or before November 29, 2015, per the contract terms. Because delivery and pricing of the grain for Contract No. 211 were completed more than 160 days prior to SGI's November 1, 2016 date of failure, Plaintiff's claim is barred and disallowed in entirety and is not entitled to recovery, pursuant to 240 ILCS 40/25-10(e), (g).

In Contract No. 215 dated March 15, 2016, Plaintiff and SGI contracted for an additional 15,508.25 bushels on a price later contract. Because March 15, 2016 is more than 160 days prior to SGI's November 1, 2016 date of failure, Plaintiff's claim is barred and disallowed in its entirety and is not entitled to recovery, pursuant to 240 ILCS 40/25-10(e), (g).

For document P-9733, pursuant to 240 ILCS 40/24-10(c)(2), Plaintiff is not entitled to compensation because he failed to give written notice to the IDOA within 21 days. Plaintiff waited too long to ask for compensation. Plaintiff failed to notify SGI and failed to notify the IDOA that he had not been paid. The plain terms of 240 ILCS 40/25-10(d), (e), and (g), and 240 ILCS 40/10-15(e) compel this finding. Accordingly, the IDOA's Decision can be affirmed on this simple reason alone.

II. The Arguments Raised in Plaintiff's Brief in Support of His Complaint for Administrative Review Are Unpersuasive.

A. The IDOA's November 9, 2017 and November 28, 2017 Emails Did Not Provide That Plaintiff Had a Valid Claim, and the Director Had the Authority to Overturn the ALJ's Decision.

Plaintiff argues that the IDOA is bound by its determination in its November 9, 2017 and November 28, 2017 emails that he had a valid claim for compensation from the Fund. Plt.'s Brief, pp. 12-13. Additionally, Plaintiff incorrectly alleges that the IDOA "violated Section 40/25-5(g) and (h) when it unilaterally overturned the Administrative Law Judge's determination. The [IDOA] does not have the statutory power to make the final decision, as the [IDOA] is not acting as the administrative law judge." Plt.'s Brief, p. 15.

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Under Illinois law, a valid claim for compensation from the Fund is "a request for payment under the provisions of this Code, submitted by claimant, the amount and category of which have been determined by the [IDOA], to the extent that determination is not subject to further administrative review or appeal." 240 ILCS 40/1-10. The November 9, 2017 and November 28, 2017 emails did not state that Plaintiff had a valid claim for compensation from the Fund. In fact, the November 9, 2017 and November 28, 2017 emails regarded settlement discussion between Plaintiff's counsel and the IDOA, which Plaintiff's counsel admitted in his email to the IDOA on January 9, 2018. (R. Vol. 2, pp. 51-52.) Via letter on December 11, 2017, which was mailed and emailed to Plaintiff's counsel, the IDOA informed Plaintiff that it did not appear that Plaintiff had any grain within coverage of the Grain Code. (R. Vol. 2, p. 55.) On January 9, 2018, the IDOA informed Plaintiff's counsel via email that the IDOA cannot agree for Plaintiff to be compensated from the Fund. (R. Vol. 2, p. 51.) Plaintiff also implicitly acknowledged that the IDOA's November 9, 2017 and November 28, 2017 emails did not provide that he had a valid claim because he continued along in the administrative process.

Further, the IDOA's administrative decisions prior to the Director's Order were subject to further administrative review or appeal, which Plaintiff sought out and complied with. *See* 240 ILCS 40/1-10. After the IDOA denied Plaintiff's claim for compensation on February 17, 2017, Plaintiff sought administrative review by (1) requesting a hearing and a decision from the ALJ; (2) complying with the reconsideration process before the Director; and (3) filing his Complaint in circuit court.

Under the IDOA's administrative rules, an ALJ's decision is not a Final Administrative Decision of the IDOA. Illinois law provides that, "[a]fter a decision is rendered by the administrative law judge, a person affected by the decision may submit a petition for reconsideration or stay of administrative action." 8 Ill. Admin. Code Sec. 1.95. Since the IDOA was affected by the ALJ's decision, the IDOA properly submitted its Petition. Further, Illinois law provides as follows:

> [t]he Director may at any time on his or her own initiative or on the petition for reconsideration or stay of action of the respondent in any contested case reconsider any matter or may at any time stay (including extend) the effective date of any relevant action pending or following a decision on any matter.... The Director shall grant a stay or reconsider a decision on his or her own initiative when justified by additional information or by changes in circumstances that would warrant reconsideration or stay.

8 Ill. Admin. Code Sec. 1.112.

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The Director's Order provides that the IDOA filed its Petition because (1) the ALJ's decision incorrectly relied on 240 ILCS 40/25(f), which was irrelevant since SGI was only licensed as a grain dealer, not as a warehouseman; (2) the Petition raised at least one point that was not adequately considered by the ALJ; and (3) the Petition demonstrated relevant date, information, or views that were not previously and adequately considered by the ALJ. (R. Vol. 2, pp. 109, 112-13.) Thus, the Director reconsidered and reversed the ALJ's decision, which was justified by additional information and by changes in circumstances that warranted reconsideration, pursuant to 8 Ill. Admin. Code Sec. 1.112.

Further, administrative agencies are not bound by an ALJ's decision, and only the final administrative decision of an agency is subject to judicial review, not an ALF's decision. *See Department of Corrections v. Adams,* 146 Ill. App. 3d 173, 180-81 (1st Dist. 1986); *Starkey V. Civil Service Com.,* 97 Ill 2d 91, 100 (1983); 735 ILCS 5/3-110. The Director's Order is the IDOA's Final Administrative Decision, not the ALJ's decision. (R. Vol. 2, p. 113.) An administrative agency is free to reject the order and decision of an ALJ, which the Director did. *See Homefinders, Inc. V. City of Evanston,* 65 Ill. 2d 115, 128 (1976); *Starkey, 97* Ill 2d at 100. "[A]dministrative agencies are to be given wide latitude in determining what action are reasonably necessary, and a court may not overturn an agency policy or action simply because the court considers the policy unwise or inappropriate." *Gersch v. Department of Professional Regulation,* 308 Ill. App. 3d 649, 658 (1st Dist. 1999); *Oak Liquors, Inc. v. Zagel,* 90 Ill. App. 3d 379, 381 (1st Dist. 1980). Therefore, the Director had the authority to overturn the ALJ's decision, and the IDOA validly denied Plaintiff's claim for compensation.

B. The IDOA Complied With the Grain Code When Denying Plaintiff's Claim.

In his Brief, Plaintiff alleges that after determining that Plaintiff "had a valid Claim, on December 11, 2017, [IDOA] reevaluated the claim and determined the validity of the claim to not be valid and the amount of the claim to be zero." Plt.'s Brief, pp. 13-14. During the email discussions with the Plaintiff, on November 9, 2017 and November 28, 2017, the IDOA did not determine that Plaintiff had a valid claim. Rather, the IDOA conducted settlement discussions with Plaintiff, which ultimately failed. (R. Vol. 2, pp. 51,55.) After settlement discussions with Plaintiff failed, on December 11, 2017, the IDOA again informed Plaintiff that it did not appear that he had any grain within coverage of the Grain Code. (R. Vol. 2, pp. 51.)

Under Illinois law, the IDOA "shall determine the validity, category, and amount of each claim within 120 days after the date of failure of the licensee and shall give written notices within that time period to each claimant and to the failed

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licensee of the Department's determination as to the validity, category, and amount of each claim." 240 ILCS 40/25-5(f). On November 1, 2016, SGI failed. On November 22, 2016, Plaintiff filed his claim for compensation. On February 17, 2017, the IDOA timely denied Plaintiff's claim for compensation, which was 108 days after SGI failed. *See* 240 ILCS 40/25-5(f). After the IDOA denied Plaintiff's claim, on March 7, 2017, he requested a hearing, and attempted to persuade the IDOA in November 2017 that he was entitled to compensation from the Fund via email. On December 11 ,2017, the IDOA informed Plaintiff that settlement discussions were over and that he did not have any grain within coverage of the Grain Code. Therefore, Plaintiff's allegation that the IDOA reevaluated Plaintiff's claim outside of the 120-day window is incorrect, and the IDOA complied with the Grain Code when denying Plaintiff's claim.

C. The IDOCA Did Not Violate the Grain Code By Providing Plaintiff With An Opportunity for A Paper Appeal, Instead of an In-Person Hearing.

Plaintiff alleges that the IDOA violated the Grain Code when it did not allow him a hearing on the merits of his claim. Plt.'s Brief, pp. 14-15. The Grain Code provides that "the hearing shall be held in the county of the location of the principal office or place of business, in Illinois, of the failed licensee and in accordance with rules." 240 ILCS 40/25-5(g). However, in his Order, the Director explained that Plaintiff "[a]fter [Plaintiff] requested a hearing, [his] counsel attempted to (1) persuade the Department that [Plaintiff] was entitled to compensation from the Fund and (2) to do so without a hearing." (R. Vol. 2, p. 109.) Despite requesting a hearing, Plaintiff attempted to bypass his statutory right to a hearing to receive a settlement or a decision without a hearing. After several communications with Plaintiff's counsel, Plaintiff and the IDOA were unable to agree on settlement, and the IDOA "was unable to agree that [Plaintiff] was entitled to any compensation from the Fund, and communicated such to [Plaintiff's] counsel on December 11, 2017." (R. Vol. 2, p. 109.)

Following the IDOA denying Plaintiff's settlement attempts, the ALJ requested that both sides submit briefs. (R. Vol. 2, 109.) Additionally, there were phone calls and emails between the ALJ and both sides. (R. Vol. 2, p. 109.) After both sides submitted briefs, the phone calls, and the emails, the ALJ issued his decision on July 23, 2018. (R. Vol. 2, p. 109.)

Administrative bodies possess broad discretion in conducting their hearings. *Village of South Elgin V. Waste Management of Illinois, Inc.*, 64 Ill. App. 3d 565 (1978). When a hearing is to be provided before an administrative body, it must present a concerned party with an opportunity to be heard in a proceeding adapted

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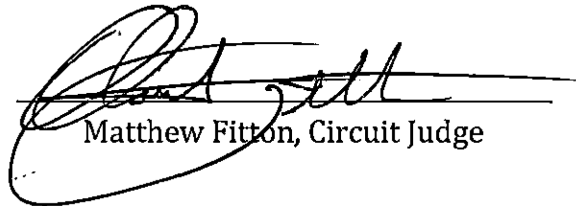
to the nature and circumstances of the dispute. *Piotrowski v. State Police Merit Bd.*, 85 Ill App. 3d 369 (5th Dist. 1980). Plaintiff's opportunity to be heard was through the paper review process, emails, and phone calls conducted by the ALJ.

Administrative proceedings are governed by the fundamental principles of due process of law. *Abrahamson,* 153 Ill. 2d at 92. An administrative proceeding need not involve a hearing akin to a judicial proceeding to comply with due process. *Id.* Due process in an administrative proceeding requires the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence. *Chamberlain v. Civil Service Com'n of Village of Gurnee*, 2014 IL App (2d) 12151, ¶ 46; *Sindermann v. Civil Service Com'n,* 275 Ill. App. 3d 917, 923 (2d Dist. 1995). Plaintiff had the opportunity to be heard, there were no adverse witnesses to cross-examine, and the Director provided an impartial ruling on the evidence. Therefore, the IDOA did not violate the Grain Code by providing Plaintiff with an opportunity for a paper appeal, instead of an in-person hearing.

Therefore, this Court does affirm the final Administrative Decision.

The Court does view this as a final and appealable offer.

Date: March 15, 2021



Matthew Fitton, Circuit Judge

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STATE OF ILLINOIS
DEPARTMENT OF AGRICULTURE

In Re: SGI Agri-Marketing, L.L.C.	)	
	)	Claim Ref. No 10
Robert Miller,	)	
Claimant	)	

RULING ON DEPARTMENT OF AGRICULTURE'S REQUEST FOR RECONSIDERATION

On July 31, 2018, Ms. Tess Little, an attorney for the Illinois Department of Agriculture, filed a Petition for Reconsideration requesting reversal of a July 23, 2018 order of Administrative Law Judge Schuering regarding a claim filed by Mr. Robert Miller for compensation from the Illinois Grain Insurance Fund ("Fund.") For the reasons below, the July 23, 2018 order is reversed and vacated and Mr. Miller's claim is denied.

The record in this matter was received from Administrative Law Judge Schuering on August 8, 2018, and is attached hereto as provided.

Background

Under the Department of Agriculture's administrative rules, a decision by an administrative law judge is not a final administrative decision of the Department of Agriculture. After a decision is rendered by an ALJ, either party can submit a Petition for Reconsideration to the Director of Agriculture. 8 Ill. Admin. Code §§ 1.95, 1.112.

This matter stems from the failure of SGI Agri-Marketing, L.L.C., ("SGI") which was licensed solely as a grain dealer under the Grain Code (240 ILCS 40). Generally, the Grain Code allows for two types of licensees. A "grain dealer" is someone who is licensed by the Department to buy grain from producers and a "warehouseman" is someone who is licensed by the Department to store grain for compensation. 240 ILCS 40/1-10. Sometimes a licensee will hold both licenses and sometimes only one license. In this case, SGI was licensed only as a grain dealer and therefore could buy grain from farmers, but could not store grain for farmers.

Timeline

On November 1, 2016, SGI's license was revoked, which constituted a "failure" under the Grain Code. On November 17, 2016, The Department's Bureau of Warehouses sent Mr. Miller a certified letter notifying him that SGI's license had been revoked and also enclosed a Legal Notice of Failure, an Informational Creditors Fact Sheet, and a blank Proof of Claims Form for Mr. Miller's use.

Mr. Miller filed a claim a few days later on November 22, 2016. According to Mr. Miller's

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claim, the date of delivery and/or date of purchase of Mr. Miller's corn was May 18, 2016. Mr. Miller's claim was for 17,366.81 bushels of #2 corn for $95,447.26. Mr. Miller signed the claim immediately below language that the claim was verified by certification and that under penalty as provided by law pursuant to Section 1-109 of the Code of Civil Procedure the claim was true and correct.

After review of Mr. Miller's claim, the Bureau of Warehouses sent Mr. Miller a claim determination on February 7, 2017. The claim determination noted that Mr. Miller had sold 17,366.81 bushels to SGI more than 160 days prior to the November 1, 2016 failure.[1] As such, the claim determination informed Mr. Miller that he was not entitled to compensation and cited 240 ILCS 40/25-10, which is the claimant compensation section of the Grain Code. The claim determination also noted that to the extent monies are available,[2] Mr. Miller may receive pro-rata payments. Finally, the claim determination stated that if Mr. Miller disagreed with the amounts set forth in the claim determination, he may request a hearing.

Mr. Miller did request a hearing on his claim determination. After Mr. Miller requested a hearing, Mr. Miller's counsel attempted to (1) persuade the Department that Mr. Miller was entitled to compensation from the Fund and (2) to do so without a hearing. The Department is always willing to discuss or review a claim determination if there is a contention that a mistake was made without the time and expense of a hearing. After several communications with Mr. Miller's counsel, in November 2017, the Department was willing to agree that Mr. Miller was entitled to some compensation. Mr. Miller's counsel and the Department were never able to agree on the total bushels within coverage, nor at what price. Ultimately, the Department was unable to agree that Mr. Miller was entitled to any compensation from the Fund, and communicated such to Mr. Miller's counsel on December 11, 2017.

The ALJ requested both sides submit briefs on controlling legal authority and/or the Department's course of conduct. Apparently, there were some phone call(s) and emails between the ALJ and both sides as well. Then, the ALJ issued a decision on July 23, 2018. However, it does not appear that there was ever a substantive hearing on the merits: the Department's February 7, 2017 determination of Mr. Miller's November 22, 2016 claim.

The Grain Code and Price Later Contracts

The ALJ's July 23, 2018 order relies on the fact that 240 ILCS 40/10-15(e), is subject to subsection (f), which begins "[i]f grain is in storage with a warehouseman..." The Petition for Reconsideration correctly points out that subsection (f) is irrelevant because SGI was only licensed as a grain dealer, not a warehouseman.

The Grain Code's 160-Day Rule

The Grain Code is the applicable and controlling law and it is clear as to the situation at hand. Section 25-10(d) of the Grain Code (240 ILCS 40/25-10(d)) provides for compensation if the later date of completion of delivery or pricing of the grain was within 160 days of the date of

1 160 days prior to November 1, 2016 was May 25, 2016

2 For example, if the sale of SGI assets were sufficient to allow for pro-rata payments.

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failure. The legislature made this rule very clear when they provided again in 240 ILCS 40/25-10(g) that claims where both the date of completion or delivery and the date of pricing of the grain are in excess of 160 days of the failure are barred and disallowed in their entirety and shall not be entitled to any recovery from the Fund or the Trust Account. Simply put, the analysis first identifies when completion of delivery took place and when completion of pricing took place. Then, identify which of those two events took place last and determine whether that date was within 160 days before the date of failure.

There is good reason for the 160-day rule. It allows the Department to become aware of a licensee with financial issues and minimize the impact of a failure. If farmers have sold grain and still not received payment 160 days later, the Department must be notified in order to, if necessary, check on the licensee's financial condition, revoke its license, and take control of the assets before things get too out of hand. The 160-day rule prevents/limits Ponzi schemes from developing where a farmer waiting to get paid contributes to a larger Ponzi scheme. In fact, farmers are incentivized with higher priority of payment if they notify the Department of nonpayment in writing within 21 days. The 160-day period is a compromise to allow farmers to sell grain at harvest in the fall and delay payment until January 1 of the next year for tax purposes. The 160-day rule is clear and unambiguous in the Grain Code and it must be complied with.

Mr. Miller's November 22, 2016 Claim

Mr. Miller's claim must be denied compensation from the Fund because even by the claim's own information, neither delivery nor pricing occurred within 160 days of SGI's failure. Mr. Miller's claim, which was verified under penalty of perjury in Section 1-109 of the Code of Civil Procedure, states that the date of delivery and/or date of purchase was May 18, 2016. The 160-day cutoff date is May 25, 2016 (160 days prior to the November 1, 2018 failure).

The date of delivery and/or date of purchase is certainly material to the issue or point in question. Section 1-109 of the Code of Civil Procedure provides that any person who makes such a false statement is guilty of a Class 3 felony.

It is unfortunate that May 18, 2016 is only 1 week outside the statutory 160-day cutoff, however, the Department has had to deny claims before that were only 1 day outside the window. To avoid this situation, Mr. Miller could have demanded payment when he delivered and priced the corn. In my experience, most farmers want their money from grain sales that very day or the next. When Mr. Miller did not receive payment within 21 days, he could have notified the Department of Agriculture in writing. If he had done so, Mr. Miller would have been within the 160-day window and also had a higher payment priority. Rather, Mr. Miller waited and did not notify the Department in writing. Mr. Miller's inaction may have allowed the SGI failure to impact even more claimants.

Mr. Miller's claim alone was sufficient for the Department to deny compensation to Mr. Miller in its February 7, 2017 claim determination. The analysis need not proceed any further, but for the benefit of the parties, a few other points are addressed below.

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Mr. Miller's 15,508.25 Bushels of Corn

It is undisputed that Mr. Miller delivered 15,508.25 bushels of corn to SGI and that Mr. Miller last delivered grain to SGI on January 26, 2016. Mr. Miller's brief contends that he is entitled to compensation from the Fund for these bushels.

The first part of the analysis is to determine when completion of delivery and completion of pricing took place. Clearly, delivery was completed on January 26, 2016. Mr. Miller and SGI apparently attempted sign a price later contract (Contract No. 215) for these bushels on March 15, 2016. However, Illinois law requires a price later contract to be signed within 30 days of the delivery, or the grain is automatically priced as a matter of law on the next business day after the 30 days. 240 ILCS 40/10-15(e). Therefore, pricing was completed on February 26, 2016.

The next part of the analysis is to identify the later date between delivery and pricing and determine if it is within 160 days before the date of failure. The later date of completion of delivery or pricing of Mr. Miller's 15,508.25 bushels of corn was February 26, 2016 and it is not within 160 days before the November 1, 2016 date of failure. Therefore, Mr. Miller's claim is barred and disallowed in its entirety and shall not be entitled to any recovery from the Fund or the Trust Account. 240 ILCS 40/25-10(e), (g).

Contract No. 211

SGI's records include price later contract Nos. 211 and 215. Both pink and white copies of each contract were provided to Mr. Miller's counsel in the Department's December 11, 2017 letter.

Contract No. 211 provides that it is for corn that was delivered on September 25, 2015. However, per the terms of the contract, it was priced on or before November 29, 2015. Because delivery and pricing of the grain for Contract No. 211 were both completed more than 160 days prior to the November 1, 2016 date of failure, Mr. Miller's claim is barred and disallowed in its entirety and shall not be entitled to any recovery from the Fund or the Trust Account. 240 ILCS 40/25-10(e), (g).

Contract No. 211 was not rolled into Contract No. 215. There is no notation of any such action on the front of the contract, the back of the contract, or on an addendum to the contract. It is not necessary for the Department to even consider whether this was or could have been accomplished and the 160-day period reset, because, as discussed below, Contract No. 215 was not delivered or priced within 160 days before SGI's failure.

Contract No. 215

As discussed above, the 15,508.25 bushels were automatically priced as a matter of law on February 26, 2016. Mr. Miller and SGI then contracted for an additional 15,508.25 bushels on a price later contract (Contract No. 215) dated March 15, 2016. Mr. Miller's claim is barred and disallowed in its entirety and shall not be entitled to any recovery from the Fund or the Trust

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Account. 240 ILCS 40/25-10(e), (g).

P-9733

Mr. Miller apparently concedes that Contract Nos. 211 and 215 do not provide a basis for compensation from the Fund. Instead, he relies solely on a document referred to as P-9733.

Unfortunately, when Mr. Miller did not receive payment within 21 days, he did not notify the Department in writing. It seems very odd that Mr. Miller did not raise a raucous with SGI and the Department that he had not been paid. Mr. Miller did not mention in his brief whether he has filed a lawsuit or arbitration against SGI either. Mr. Miller – for reasons only known to Mr. Miller and possibly SGI – let more than 160 days pass without payment form SGI. Unfortunately, for Mr. Miller he waited so long, his claim is not eligible for compensation from the Fund because it is outside the 160-day statutory window.

The Illinois Grain Insurance Fund is funded by assessments, including assessments upon farmers and licensees. The Grain Code prohibits compensation from the Fund in these circumstances. It would defeat the purpose of the Grain Code for Mr. Miller to be compensated from the Fund. It would be unfair to those that paid assessments into the Fund and claimants that would receive a smaller payment in the future. It would not be in good faith for the Department to allow this kind of claim to be compensated from the Fund when Illinois law prohibits it.

Miscellaneous

For reasons that are not clear, Mr. Miller appears to argue that the Department contracted to pay Mr. Miller amounts from the Fund. The Department informed Mr. Miller in the February 2017 claim determination and again in the December 2017 letter that Illinois law prohibits compensation from the Fund. No such contract exists, and even if one did exist, it would be void as against public policy (the Grain Code) and because payments from the Fund must be authorized by the Illinois Grain Insurance Corporation. The Department and Mr. Miller's counsel were never even able to agree on compensation for total bushels nor price per bushel, let alone enter into a contract.

In addition, it Mr. Miller's claim was presented to the Illinois Grain Insurance Corporation, and the Corporation was aware that the claim was not within the 160-day window, it would not have legal authority to pay the claim, regardless of any contract.

I. FINDINGS OF FACT

1. Mr. Miller delivered 17,366.81 bushels of corn to SGI, the last of which was delivered on January 26, 2016.
2. The Department's Petition raises at least one point that was not adequately considered by the Administrative Law Judge.

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3. The Department's position is pursued for good reasons – to determine Grain Code claims in compliance with Illinois law.

4. There are no facts that weigh against granting the Department's Petition.

II. CONCLUSIONS OF LAW

1. SGI was licensed by the Department as a grain dealer only, not a warehouseman, and therefore could not store any grain for Mr. Miller.

2. Because the last date of delivery was January 26, 2016, the grain was priced on February 26, 2016 pursuant to 240 ILCS 40/10-15(e).

3. The Department's Petition for Reconsideration demonstrates relevant data, information or views – specifically including contained in the administrative record that were not previously or not adequately considered by the Administrative Law Judge.

4. The Department's Petition is not frivolous and is being pursued in good faith

5. Granting the Department's Petition is not outweighed by a preponderance of the evidence.

THEREFORE IT IS ORDERED:

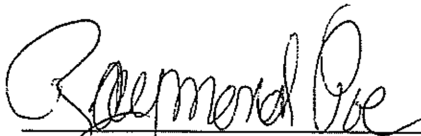
1. The relief requested in the Petition for Reconsideration is granted.

2. The July 23, 2018 decision by ALJ Schuering is reversed and Mr. Miller is not entitled to any compensation from the Illinois Grain Insurance Fund.

3. All other arguments, objections, or issues raised by Mr. Miller are denied.

This is a final administrative decision and subject to the Administrative Review Law (735 ILCS 5/3-101 *et seq.*). Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision.

Dated this 26th day of October 2018



Raymond Poe
Director
Illinois Department of Agriculture

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Exhibit A

STATE OF ILLINOIS
BUREAU OF ADMINISTRATIVE HEARINGS
FOR
Department of Agriculture
Division of Agricultural Industry Regulation
Bureau of Warehouses

Robert Miller, Petitioner	)	
	)	WRHS-SGI Agri-Marketing Claim Ref. No. 10
Department of Agriculture, Respondent	)	

FINAL ADMINISTRATIVE ORDER

THIS MATTER comes for a ruling pertaining to argument submitted by Robert Miller (the "Claimant") and the Illinois Department of Agriculture (the "Department") with respect to various aspects of the Claimant's Claim dated November 22, 2016 (the "Claim"), which is at issue in this Matter. For the reasons stated hereinafter, the Claim Form, defined herein, the material submitted by Stipulation of the Parties dated February 22, 2018[1], argument submitted by counsel for the Claimant and the Department, and additional records supplied by the parties (collectively the "Record"), is sufficient to permit a summary disposition of the appeal concerning this Claim. Therefore, this constitutes a Final Administrative Order.

I. PROCEDURAL HISTORY

SGI Agri-Marketing, LLC ("SGI") was a grain dealer in Gibson City, Ford County, Illinois. The Department, pursuant to powers granted by the Grain Code, 240 ILCS 40/1-1,

[1] On February 22, 2018, the Department and Claimant submitted a *Stipulation Regarding Course of Conduct from November 2017 Through January 2018* (the "Stipulation"). The Stipulation included ten attachments identified as "a" through "j". This material provides additional contextual information surrounding the events prior to the Failure of SGI Agri-Marketing. The analysis of the claim of the Claimant that this "course of conduct" binds the Department to a determination is set forth below at III. A., page 7.

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et. seq. (the "Code"), determined that a Failure[2] of SGI occurred on November 1, 2016. At an administrative hearing on November 9, 2016, SGI's grain dealer license was revoked for financial deficiencies, *Minutes of the Illinois Grain Insurance Corporation Board Meeting* (the "Minutes"), March 20, 2017, Agenda Item V.C.1, pg. 3,4[3].

The record in this Matter does not disclose the grounds for the determination of the Failure; however, that reasoning is unimportant to the resolution of this Matter[4]. Following the Failure, the Department commenced a process of resolution of the affairs of SGI in a manner set forth in various sections of the Grain Code, *Id.* The Claimant filed his Proof of Claim pursuant to the Grain Code on November 22, 2016, seeking compensation for 17,366.81 bushels of corn having a market value of $95,447.26, Stipulation, p. 3 (the "Claim Form"). On that same date, Mr. Donald Reifstack, a representative of the Department, acknowledged receipt of the Claim Form by his signature thereon. *Id.* On February 7, 2017, the Department issued Claimant its "Illinois Department of Agriculture Notice of Validity, Category or Amount of Claim ("Determination Notice"). The Department determined that Claimant had filed a valid claim but was not eligible for compensation. Determination Notice, p. 1. The Department, its Counsel, and Counsel for the Claimant, exchanged a variety of correspondence which culminated in a letter dated December 11, 2017 from the General Counsel of the Department. (the "GC Letter"). The GC Letter denied, in whole, the Claimant's Claim. Stipulation, pp. 18 - 19.

Thereafter, this matter was assigned to the Bureau of Administrative Hearings of the Department of Central Management Services ("Bureau") for adjudication of the Claimant's

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[2] Capitalized terms not otherwise defined herein have the meaning ascribed to them in Section 1-10 of the Grain Code, 240 ILCS 40/1-10, or Section 281.7 of regulations adopted pursuant to the authority of the Grain Code, 8 Ill. Adm. Code § 281.7. In all cases, the definition as set forth in the Grain Code shall prevail.
[3] Official Notice of the *Minutes*, in their entirety, is taken as authorized by Section 10-40, *Rules of evidence; official notice*, of the Illinois Administrative Procedure Act, 5 ILCS 100/10-40. The *Minutes* are published on the Department Website at https://www2.illinois.gov/sites/agr/Events/Event%20Documents/Grain%20Insurance/MinutesIllinoisGrainInsuranceFund3-20-2017.pdf#search=SGI, retrieved July 12, 2018.
[4] For additional detail, See *Id.*

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appeal on September 14, 2017[5]. Counsel for the parties have suggested that a preliminary decision on individual legal issues would clarify the legal posture of the claim and, potentially, determine the need for an Administrative Hearing and the issues to be adjudicated therein. Each of the legal arguments raised by the parties are addressed herein by reference to the Stipulation, argument filed by the Claimant and the Department, and the material provided to the Bureau with respect to this Matter.

II. THE GRAIN CODE

Warehouses and Warehousemen storing the grain of producers have been regulated in the State of Illinois since the since at least the time of passage by the General Assembly of the Warehouse Act of 1871, *Smith-Hurd Stats.* Ch. 114, § 189, *et seq.* As early as 1898, Illinois Courts were called upon to address practices of Warehousemen which were detrimental to the producers, *Central Elevator Co., et. al. v. People ex. Rel. Moloney, Atty. Gen. Seaverns,* 174 Ill. 203, 51 N.E. 254.

Since that initial legislation, the provisions regulating grain warehousing have undergone numerous changes[6], evolving into the current Grain Code. Even though these efforts were intended to improve the regulatory scheme and reduce risks to producers, litigation[7] and changing market practices required multiple amendments and finally, recodification and revisions of previous laws[8] into the Grain Code[9].

[5] The referral occurred 317 days after the Failure despite the requirement to appoint an Administrative Law Judge within 30 days after a failure, 240 ILCS 40/25-5(h).

[6] 1998 *Ill Atty. Gen. Op.* 017

[7] *E.g. Demeter v. Werries*, 676 F. Supp 882 (C.D IL, 1988) (finding amendments to the Illinois Grain Dealers Act and Illinois Grain Insurance Act unconstitutional as applied to grain warehousemen licensed under the United States Warehouse Act); *Gorenz v. Illinois Department of Agriculture*, 653 F.2d 1179, 1183, n. 7 (7th Cir. 1981) (holding ineffective Illinois statutory provisions "to give the farmer-beneficiaries a priority over general creditors").

[8] *See* Neil F. Hartigan, *The Illinois Grain Insurance Act: Deserved and Cost-Efficient Protection for Rural Communities*, 7 Journal of Agricultural Taxation & Law 99, (1985) for history surrounding the adoption of the Illinois Grain Insurance Act, P.A. 83-68, eff. Aug. 16, 1983, repealed upon implementation of the Grain Code.

[9] *See, generally*, 1998 *Ill Atty. Gen. Op.* 017 for a discussion of various enactments and amendments resulting in adoption of the Grain Code.

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The application of the Grain Code in this matter requires a recognition of three particular elements of the statutory provisions and overall scheme. First, the statute is remedial. It was adopted in an effort to protect grain producers in this State from grain elevator and warehouse failures, irrespective of the cause, 240 ILCS 40/1-5. Second, the General Assembly has specifically directed that the statute is to be "liberally construed" for the benefit of Claimants, *Id.* Finally, and with equal force, the General Assembly has dictated that the claims handling procedure is subject to a rigid chronological framework for the timely and conclusive handling of claims, 240 ILCS 40/25-5. A brief discussion of each of these points is pertinent.

A. REMEDIAL NATURE

The Appellate Court has identified a "remedial statute", in the context of agricultural products as "intended to protect a large class of people, engaged in agriculture pursuits, who were, in the nature of the business, more or less remote from market, from imposition and actual fraud when intrusting their products and produce into the hands of commission men for sale, located at commercial centers", *People v. Frank G. Heilman Co.*, 263 Ill. App. 514 (1st Dist., 1931). Similarly, the Illinois Supreme Court has said that remedial statutes are "intended to curb a variety of fraudulent abuses and to provide a remedy to individuals injured by them. Remedial statutes are designed to grant remedies for the protection of rights, introduce regulation conducive to the public good, or cure public evils. (Trailing Citations Omitted.) *Scott v. Ass'n for Childbirth at Home, Int'l*, 88 Ill. 2d 279, 288, 430 N.E.2d 1012, 1017 (1981). Here, The General Assembly has made clear that the purpose of the Grain Code is "to promote the State's welfare by improving the economic stability of agriculture through the existence of the Illinois Grain Insurance Fund in order to protect producers in the event of the failure of a licensed grain dealer or licensed warehouseman…", Grain Code, §1-5. And, continues, "To that end, this Code shall be liberally construed and liberally administered in favor of claimants", *Id.*

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B. LIBERAL CONSTRUCTION

Liberal statutory construction signifies an interpretation which produces broader coverage or more inclusive application of statutory concepts. *Petition of K.M.*, 274 Ill.App.3d 189, 194, 210 Ill. Dec. 693, 653 N.E.2d 888 (1995). Liberal construction is ordinarily one which makes a statute apply to more things or in more situations than would be the case under strict construction. *Id.* "'[L]iberal construction' means to give the language of a statutory provision, freely and consciously, its commonly, generally accepted meaning, to the end that the most comprehensive application thereof may be accorded, without doing violence to any of its terms. (Internal citations omitted.) Statutes should be interpreted so that the manifested purpose or object of the statute can be accomplished. (Internal citations omitted.) Thus, a statute is liberally construed when its letter is extended to include matters within the spirit or purpose of the statute, *Board of Educ. of Community Consol. School Dist. No. 59 v. Illinois State Board of Education*, 317 Ill.App.3d 790, 795, 740 N.E.2d 428, 251 Ill. Dec. 347, (1st Dist., 5th Div., 2000).

C. CHRONOLOGICAL FRAMEWORK

Against these principles, the General Assembly has imposed a strict requirement for adjudication of claims. In Section 25-5(j) of the Grain Code, the General Assembly declares that the intent of the Code is "that the time periods and deadlines in this Section 25-5 are absolute, and are not to be tolled, or their operation halted or delayed." 240 ILCS 40/25-5 It continues to provide that, in the event of a bankruptcy of a licensee, the Director of the Department shall move to lift any automatic stay and the Department may seek to "expeditiously remove any order of court or administrative agency that might attempt to delay the time periods and deadlines contained in this Section 25-5." *Id.* It is clear that it was the express intention of the General Assembly to create a prompt and certain method of recovery for producers injured by a Failure.

The Appellate Court has observed:

> The [Code] is hardly a model of clarity. Nevertheless, some features of the [Code] are clear: (1) grain producers are entitled to payment of their claims, to

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> the extent provided, within 90 days; (2) the initial source of payment is the assets of the failed grain dealer, the Trust Fund; (3) the Insurance Fund never comes into play if the assets of the failed grain dealer are available to pay 85% of the claims within 90 days; and (4) grain producers are never harmed by the [Code] and the Insurance Fund is repaid from the assets of the failed grain dealer only to the extent that the Fund's monies have been used to pay claimants.

Adams Farm v. Doyle, 312 Ill.App.3d 481, 486, 727 N.E.2d 638 (4th Dist. 2000) (Myerscough, J. *dissenting*) (internal citations omitted).[10]

The adjudication of claims appears within the statutory framework in Section 25-5 as a multi-step process which commences with providing notice by publication and to each potential claimant whose identity and location of which is "readily ascertainable". 240 ILCS 40/25-5(a). Additional provisions are provided for notice to potential claimants who are discovered during the liquidation process, and, specify the requirements of a claimant for a timely filing of its claim.

Subsection c specifies the general content of each claim which is filed. 240 ILCS 40/25-5(c). Upon a timely filing, meeting the content requirement, but not more than 120 days after the date of Failure, the Department "shall determine the validity, category and amount of each claim", and shall give "written notice" to "each claimant" of the "Department's determination as to the validity, category and amount of each claim", 240 ILCS 40/25-5(f). Thereafter, the claimant may request a hearing on the determination by the Department if the claimant disagrees with the determination.

Each claim has three aspects: validity, category, and amount. According to the definition of "valid claim", it is a request for payment submitted by claimant, the amount and category of which have been determined by the Department, to the extent that determination is not subject to further administrative review or appeal", 240 ILCS 40/1-10.

[10] Even the Dissent clearly acknowledges that the "clear legislative intent of the Act is to protect grain producers and to compensate claimants for their losses... Clearly the purpose behind the Act was to "protect fully all grain producers from losses caused by a failed grain dealer", *Adams Farm*, 312 Ill. App. 3d at 491.

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While the "categories" of claimants are not defined terms within the Code, the categories of claimants are apparent from the language of Section 25-10 of the Code. 240 ILCS 40/25-10.

First, the category of "warehouse claimants" is those persons defined in Subsection (a). 240 ILCS 40/25-10(a). These claimants possess warehouse receipts or other written storage obligations, and have delivered grain simply for storage and not for merchandising. A second category of claimant is a producer who delivered grain within 21 days of the Failure (i) without the issuance of a warehouse receipt, or (ii) for which payment in full has not been made. Claims filed in this category are described in Section 25-10(c) for which 100% of the amount of the claim determined by the Department is paid. 240 ILCS 40/25-10(c).

The final category of claimant is described by subsections (d) & (e) and limited by subsections (f) and (g)(1) & (2). 240 ILCS 40/25-10(d)-(g)(1) & (2). These claimants are engaging in a transaction with the licensee on a "price later" contract. The various subsections set out a timeline which determines whether claims are valid or not. All claims in this category are limited to compensation of 85% of the claim amount[11]. It is this category of claim filed by the Claimant.

Price later contracts have several limitations imposed by the Code.

1. Contracts where the completion of the delivery *or* pricing is *less than* 160 days *and* the PL Contract was entered into *not more than* 365 days before the date of Failure are compensable;

2. Contracts where the pricing has not occurred *and* the completion of delivery *or* the date of the contract is *less than* 365 days before the date of Failure are compensable;

3. Contracts where the pricing *and* the completion of delivery *is greater than* 160 days before the date of Failure are not compensable; and,

[11] "[Price later] contracts do allow producers desirable marketing alternatives for their grain. Concomitantly, however, they are a primary cause of elevator insolvencies . . . To discourage the use of [price later] contracts, the [Code] guarantees only 85 percent recovery.", *Id. at* 111

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4. Contracts where the date of the contract *and* the completion of delivery *is greater than* 365 days before the date of Failure are not compensable.[12]

Therefore, applied to the SGI Agri-Marketing Failure, the relevant dates are November 1, 2016, which was the date of SGI's Failure; May 25, 2016, which is 160 days before SGI's Failure; and November 2, 2015, which is 365 days before SGI's Failure.

Analysis of any price later contract requires consideration of three (3) questions. First, when was the price later contract entered into? Second, when was delivery completed? Third, when was the grain priced? It is against this background that the Claim and arguments of counsel must be analyzed.

III. ANALYSIS

A. COLLATERAL ARGUMENTS

"It is a commanding tenet of administrative law that an administrative agency and its officers may exercise only those powers conferred upon them by statute", *Cent. Illinois Pub. Serv. Co. v. Pollution Control Bd.*, 36 Ill. App. 3d 397, 407, 344 N.E.2d 229, 236 (5th Dist. 1976). The Illinois Supreme Court has held that "a person seeking a judicial review of an administrative decision must act promptly and within the time prescribed by the statute." *Pearce Hosp. Found. v. Illinois Pub. Aid Comm'n*, 15 Ill. 2d 301, 305, 154 N.E.2d 691, 694 (1958). A wide variety of similar holdings with respect to claimants in administrative actions exist.[13]

Section 25-5(f) of the Code provides that the Department shall "determine the validity, category, and amount of each claim within 120 days after the date of failure of the licensee", and shall give "written notice within that time period to each claimant and to the failed licensee of the Department's determination as to the validity, category, and amount of each claim." 240 ILCS 40/25-5(f). Although the timeline of this Section does not limit the time for conducting hearings on appeals of determinations, it does establish a definitive timeline for determination

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[12] Items 1, 3 & 4 all refer to the occurrence of the later of the two dates, that is whichever is closest the limitation date e.g, 160 days or 365 days, Code, §25-10(d) & (e) and (g)(2).

[13] Similarly, the Appellate Court has held timelines imposed by statute on an administrative agency are jurisdictional. *E.g. Byington v. Department of Agriculture*, 327 Ill.App.3d 726, 730, 261 Ill.Dec. 961, 764 N.E.2d 576, 579–80 (2d Dist. 2002); *Ferrari v. The Illinois Department of Human Rights*, 351 Ill.App.3d 1099, 1103, 815 N.E.2d 417, 421 (4th Dist. 2004).

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of claims and payment of those claims in a short period of time. According to the timeline, all undisputed claims must be filed, determined and paid in less within a 150 day period from the date of Failure.

Counsel for both parties have addressed the "course of conduct" of the Department after the claim determination on February 7, 2018. This course of conduct implicates two issues to be resolved before analysis of the Claimant's Claim.

First, the Code establishes a rigid schedule for handling of claims, discussed above. As demonstrated by the text of the Code, the mandatory language of Subsection (f) can only be interpreted as a grant of authority for a 120-day period to determine the validity, category and amount of each claim. In this matter, that period expired on March 1, 2017. Therefore, any revision, or purported revision, of the claim determination after that date is beyond the authority of the Department and void. It is the appeal of the claim determination of February 7, 2017 which is at issue here.

Second, the parties have argued whether the representations of the Department, in discussions regarding the Claimant's Claim, are contractual such that they can be enforced against the Department. Administrative Law decisions are adjudicatory in nature and not subject to negotiation between the Agency and the adverse party. Here, a specific statutory scheme dictates the timing, content, decisional standards and levels of compensation. The Department has no authority to vary from those standards in the absence of statutory power to do so.

B. THE CLAIMANT'S CONTRACTS

SGI failed on November 1, 2016 and had its license revoked on November 9, 2016, *Minutes*, p. 3. As a result, Section 25-5 dictates the following relevant timeline:

December 1, 2016	Last date to commence publication of notice in newspaper concerning the Failure, Section 25-5(b)(1).
	Last Date for appointment of an Administrative Law Judge for hearings on claim determinations objected to by claimants, Section 25-5(h).

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January 2, 2017 [14]	Last date to mail notice to claimants whose name and address is known, Section 25-5 (a).
January 30, 2017	Last date for Claimants to file claims. Claims after this date are barred, Section 25-5(a)(4).
March 1, 2017	Last date for Department to determine the validity, category and amount of all claims and give notice to each claimant, Section 25-5 (f).

By virtue of the Code, the Claimant's conduct must be examined in comparison to this timeline. There appears to be no dispute between the parties as to receipt of notice. Similarly, there appears to be no dispute that the Claimant timely filed his Claim. The Determination Notice of a "valid claim" of $95,447.26 of which no portion was payable was issued on February 7, 2017 to the Claimant, within the required guideline. A handwritten notation on that document, presumably by the Claimant indicates that it was "received by [Claimant] on February 13, 2017. The notice stated that no compensation will be paid "due to the corn not sold and paid for greater than 160 days[.]" Therefore, the final determination of the Department during the period set forth in Section 25-2 of the Grain Code is a valid claim payable to the Claimant in the amount of zero Dollars ($0.00).

The Claim Form seeks compensation for 17,366.81 bushels of corn having a claimed value of $95,447.25 for a claim in the "Grain Dealer"[15] category, Stipulation, Attachment B. It does not identify individual price later contracts. The Department's Counsel communicated with Claimant's Counsel on November 28, 2017 by e-mail. Attached to that e-mail was a spreadsheet identifying deliveries made by the Claimant to SGI. The Claimant delivered 1,858.56 bushels of grain on September 25, 2015, evidenced by scale Ticket Numbers 101626 and 101628. Thereafter, the Claimant delivered 1,376.09 bushels, also on September 25, 2015 evidenced by scale Ticket Numbers 101628 and 101632. After September 25, 2015, no

[14] This date is adjusted from December 31, 2016 because December 31, 2016 was a Saturday and January 1, 2017 was a Sunday and a legal holiday.

[15] "Grain dealer" means a person who is licensed by the Department to engage in the business of buying grain from producers, 240 ILCS 40/1-10. Grain dealers include merchandising of grain by producers through price later contracts. Also, the price later contract form contains a warning that "[t]the contract is regarded as a grain dealer claim." PL Contract 3.

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deliveries were made until November 30, 2015, which continued through January 26, 2016 totaling 14,132.16 bushels of grain. These three groups of deliveries total the amount of grain (17,366.81 bushels) claimed on the Claim Form.

A claim with respect to the delivery of 1,858.56 bushels of grain subject to a price later contract ("PL Contract 1") has been abandoned by the Claimant. According to his Counsel, "[The price later contract] represents 1,858.56 bushels … was entered into in July of 2014 and does not meet the 160-day requirement under the [G]rain [C]ode", Claimant's Brief, p. 1. A copy of PL Contract 1 was not provided as a part of the Stipulation.

After abandonment of a claim for the PL Contract 1, the remaining grain (15,508.25 bushels) identified on the Claim Form is documented in two price later contracts.

A price later contract for 1,376.09 bushels ("PL Contract 2") was for delivery of grain on September 25, 2015 was signed by a representative of SGI Agri-Marketing on October 7, 2015 and by the Claimant on October 10, 2015, Stipulation, Attachment e. According to a notation of unknown origin on the face of the contract, the grain was not priced.[16] After execution of this contract, the number of unaccounted for bushel identified on scale tickets is 14,132.16 bushels.

Another price later contract for 15,505.25 bushels ("PL Contract 3") was for delivery of grain from September 25, 2015 through January 26, 2016 and was signed by a representative of SGI Agri-Marketing on March 9, 2016 and by the Claimant on March 15, 2016, *Stipulation, Attachment e.* The number of bushels subject to this contract (15,505.25) exceeds the total number of bushels of the unaccounted-for scale tickets (14,132.16) by 1,376.09 bushels, exactly the amount of the previous price later contract. It is only the total number of bushels of PL Contract 1 and PL Contract 3 which total the number of bushels set forth on the Claim Form. What, then, becomes of the PL Contract 2? The GC Letter states:

> It is my understanding that your client contends that [PL Contract 2] was rolled into [PL Contract 3]. There is no notation of any such action on

[16] Stipulation, Attachment F. The Notation appears to read "for 2014 crop delivered in Sept 2015 (not priced)".

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the front of the [PL Contract 2], the back of the [PL Contract 2] or on an addendum to the [PL Contract 2]. GC Letter, p. 1.

Although not explicitly rejected, it appears that Claimant's contention was not considered. "It is not necessary for the Department to consider whether this was/could be accomplished …", GC Letter, p. 1. In fact, it *is* necessary to consider Claimant's assertion in order to correctly understand his Claim.

A "novation" is a contract which substitutes a new agreement or obligation for an existing one by mutual agreement. "In order for there to be a novation, four elements are required: (1) a previous, valid obligation; (2) a subsequent agreement of all the parties to the new contract; (3) the extinguishment of the old contract; and (4) the validity of the new contract", *Pielet v. Pielet*, 2012 IL 112064, ¶ 52 (2012).

PL Contract 3 meets the standard of a novation. PL Contract 2 was a previous valid obligation between Claimant and SGI. The subsequent agreement was agreed to by Claimant and SGI as evidenced by their respective signatures on PL Contract 3. The facts and circumstances surrounding PL Contract 2 and PL Contract 3 demonstrate an intention to eliminate PL Contract 2. All of the terms of PL Contract 2 relating to type of grain, delivery dates and price were included in PL Contract 3; as a result, all three contracts cannot exist at the same time otherwise Claimant would have been obligated to deliver an additional 1,376.09 bushels on PL Contract 2 or PL Contract 3. The fact that the total number of bushels of PL Contract 1 and PL Contract 3 equals the number of bushels claimed on the Claim Form is the most certain indication of the parties' intent to extinguish PL Contact 2. Finally, there is no dispute that the last contract was valid and binding on the parties.

i. PRICE LATER CONTRACT NUMBER 215 (PL Contract 3)

Having determined that PL Contract 3 is the correct instrument to be interpreted and applied, the three questions for analysis of the instrument can be answered.

1. When was the price later contract entered into?

PL Contract 3 was entered into on March 15, 2016 upon Claimant affixing his signature on the document. The parties do not dispute this issue. *See* Stipulation, Attachment F.

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2. When was delivery completed?

The parties have stipulated to the delivery dates by agreeing to the spreadsheet included by Department Counsel in an e-mail dated November 28, 2017. Stipulation, Attachment E. The earliest date of delivery was September 25, 2015 and the last date of delivery was January 26, 2016[17].

3. When was the grain priced?

The Claimant and the Department strongly disagree on the date that the grain was priced pursuant to PL Contract 3. The Claimant asserts that the grain was priced on June 6, 2016, the date upon which Claimant signed a "Purchase Confirmation" issued by SGI on May 18, 2017, Claimant's Brief, pp. 3-4. The Department asserts that the grain was priced on February 26, 2016, reasoning that following the last delivery on January 26, 2016, "the price later contract for this grain was not signed until March 15, 2016 which was not within 30 days of the date of delivery. Therefore, as a matter of law, the grain was priced on February 26, 2016 See 240 ILCS 40/10-15(e)." GC Letter, p 2.

Section 10-15 of the Code, 240 ILCS 40/10-15, addresses and sets forth applicable standards for price later contracts. Among the provisions contained therein are printing specifications, minimum collateralization requirements, grain valuation and other provisions, including the pricing provision cited by the Department. However, the application of the provision cited in the GC Letter is subject a precedent determination as to the conduct of the producer and the grain dealer. The subsection provides,

> *Subject to subsection (f) of this Section*, if a price later contract is not signed by all parties within 30 days of the last date of delivery of grain intended to be sold by price later contract, then the grain intended to be sold by price later contract shall be priced on the next business day after 30 days from the last date of delivery of grain intended to be sold by price later contract at the market price of the grain at the close of the next business day after the

[17] A date is not shown for one delivery. However, the scale ticket number is less than the scale ticket number of the final delivery leading to a conclusion that the undated delivery had to be before the last deliver date, January 26, 2016.

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> 29th day. When the grain is priced under this subsection, the grain dealer shall send notice to the seller of the grain within 10 days. The notice shall contain the number of bushels sold, the price per bushel, all applicable discounts, the net proceeds, and a notice that states that the Grain Insurance Fund shall provide protection for a period of only 160 days from the date of pricing of the grain,

240 ILCS 40/10-15(e)(emphasis added).

Clearly, the intention of this subsection is to be subordinate to subsection (f) which provides that, if grain is "in storage with a warehouseman and is intended to be sold by price later contract, that grain shall be considered as remaining in storage and not be deemed sold by price later contract until the date the price later contract is signed by all parties." 240 ILCS 40/10-15(f). Therefore, to determine which subsection applies to the Claimant-SGI transaction, the intent of the parties need be determined.

Illinois courts allow extrinsic evidence to interpret contracts, *Baxter Healthcare Corp. v. O.R. Concepts, Inc.*, 69 F.3d 785, 789 (7th Cir. 1995) (applying Illinois law). Typically, extrinsic evidence is used to determine the proper interpretation of an ambiguity, *Id.* According to the *Baxter* Court, "Illinois has largely rejected the traditional four corners rule, which holds that if a contract is clear on its face, no other evidence may be introduced to contradict its terms." *Id.* Thus, Illinois courts may look to extrinsic evidence to discover the parties' genuine intent.

Considered against this standard, extrinsic evidence of the intent to enter into a price later contract exists. First, a portion of the grain was subject to a prior price later contract. If Claimant had not intended to sell grain to SGI on a price later basis, he would not have previously entered into such a contract with SGI. Second, there is no evidence of any transactions with SGI by Claimant except for price later contracts. The Claimant's Claim addresses only price later contracts, no portion of his claim is for sales in any other manner; and, the only contracts raised by Claimant or the Department are price later contracts. Finally, there is the PL Contract 3. The contract itself leaves no ambiguity as to the intention of the parties. Determining that the intent was to enter into a price later contract, the pricing does not occur on February 26, 2016; rather, it occurs at a later date.

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The scale ticket is issued at the time of delivery of the grain to the grain dealer; at this point, the producer is separated from the fruit of his labors in exchange for a document that evidences his sale of it, delivery of it and the quantity of it. Although the scale tickets are not annotated as required by Section 10-15(g) of the Code with the notation "Sold Grain: Price Later." 240 ILCS 40/10-15(g), this evidence is not determinative. The Scale Tickets confirm the deliveries and quantities[18] but contain no annotation, legend or other marking which indicate the intended manner of sale of the grain, (*e.g.*, Cash, Price Later). Therefore, the scale tickets demonstrate no intention of the Claimant at the time of delivery of the grain. However, it is important to note that the scale tickets provided are no signed copies; they have no identification (save a check mark to the right of each Ticket Number) which further authenticates them as the receipt for the grain from SGI to the Claimant.

Such an interpretation is consistent with Section 10-15(e) of the Code, 240 ILCS 40/10-15(e). If the evidence of intent was ambiguous or non-existent, a finder of fact would examine the weight and credibility of the evidence to determine the intent of the parties. If the intent could not be determined, a mechanism must be in place to price the grain and create an enforceable obligation against the grain dealer for the protection of the producer.

Application of Section 10-15(f) of the Code concludes that grain delivered after September 25, 2015 through March 15, 2016, the date of PL Contract 3, was in the possession of SGI as "remaining in storage and not deemed to be sold by price later contract" until March 15, 2016, the date of Claimant's execution of PL Contract 3. Therefore, the grain was sold on March 15, 2016, but priced according to a traditional mechanism for such contracts. That pricing occurred on the SGI Purchase Confirmation issued on May 18, 2016. The confirmation was signed by Claimant on June 6, 2016 and returned, according to a written notation, on June 7, 2016.

Claimant argues that the pricing occurs when he signed the confirmation on June 6, 2016, stating "the so-called purchase confirmation sent by SGI and dated May 18th, 2016 [sic] did indeed, by its very terms, require a signature to be enforceable and binding." Claimant's

[18] See Footnote 17.

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Brief, p. 3. The Department appears to argue that the Claim Form, dated May 18, 2016 in a column titled "Date of Delivery and/or Date of Purchase", binds Claimant to a pricing decision as of that date. Stipulation, Attachment A.

The Claim Form may reflect the date of issuance of the Price Confirmation, but it cannot bind Claimant for two reasons. First, the Department's form does not identify the column where the date appears as the location of a pricing date. The column is labeled incorrectly if the form is intended to commit the signer to a pricing date appearing in that column. Claimant could not have known that a column labeled "Date of Delivery and/or Date of Purchase" actually meant "Date of Pricing". The second reason for not binding Claimant to that date also answers the question of when the grain actually was priced. The Purchase Confirmation issued by SGI to Claimant controls the pricing and is the best evidence of the pricing date, especially if that conflicts with a Departmental form and, most especially if that form had information inserted by the Department.

The Uniform Commercial Code, 810 ILCS 5/1-101, *et. seq.* ("UCC"), governs commercial transactions such as the price later contract between Claimant and SGI. Article 2 of the UCC establishes uniform commercial standards for sales transactions in Illinois, including transactions of grain between SGI and Claimant. 810 ILCS 5/2-101, *et. seq.* The Illinois Supreme Court has held, in similar circumstances, that grain sales are subject to the UCC and the transaction participants are "merchants" within the meaning of Section 2-201 of the UCC. *Sierens v. Clausen*, 60 Ill.2d 585, 589, 328 N.E.2d 559 (1975).

Section 2-201(2) addresses the Purchase Confirmation issued here. It provides that, between merchants, and "if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents", it satisfies the requirements of Section 2-201(1) of the UCC "against such party unless written notice of objection to its contents is given within 10 days after it is received." 810 ILCS5/2-201(2).

PL Contract 3 requires the selection of a price by the Seller of "any business day between the date of this contract and the 25 [sic] day of June, 2016", PL Contract 3, Basis

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Section. The "Price Later Disclosures" of the contract form provide, in relevant part, "[w]ithin 5 business days of Seller selecting a price for all or any part of the grain covered by a price later contract, the Buyer [SGI] shall mail to the Seller [Claimant] a confirmation indicating the price selected", PL Contract 3, Disclosures, H. The Purchase Confirmation indicates a "Date" and "Original Date" of May 18, 2016, which was a Thursday. SGI was required to mail the Purchase Confirmation to Claimant not later than Thursday, May 25, 2016. The SGI representative executing the purchase confirmation dated his signature as "05/18/16", within the required time. Claimant executed this same form on June 6, 2016. A handwritten notation on the form indicates "sent back on 6-7-16". That notation could only have come from Claimant who was the party signing on June 6 and in possession of the Purchase Confirmation.

There are two possible interpretations of the Purchase Confirmation. Both lead to a conclusion that the pricing of the grain occurred after May 25, 2016, 160 days before the date of Failure. The first is that the "course of conduct" between two merchants (Claimant and SGI) was such that SGI required receipt of the executed form to "confirm" the price. The printed form is notated "Please Sign And Return One Copy Immediately! Errors Should Be Promptly Reported." The only plausible explanation for such a notation is that SGI required the return of the Price Confirmation and a report of any errors by the recipient. In this interpretation, the pricing was finalized on the date Claimant signed the Price Confirmation, June 6, 2016.

The second interpretation relies on the UCC. Section 2-201(2) provides for a written confirmation which, ultimately, binds both parties to the transaction "unless written notice of objection to its contents is given within 10 days after it is received." 810 ILCS 5/2-201(2). If mailed on its "Original Date", May 18, 2018, and received the next day by Claimant, Claimant had 10 days in which to object to its contents. Therefore, the earliest possible date that the objection period could have expired was May 28, 2016.

Either interpretation results in a date on which the pricing was finalized within 160 days of the date of Failure.

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CONCLUSIONS OF LAW

1. The failure of SGI Agri-Marketing, LLC occurred on November 1, 2015 by the suspension of its license as a grain dealer by the Department of Agriculture.
2. Claims for compensation could be filed from November 1, 2015 through and including February 28, 2016.
3. Relevant deadlines for analysis of price later contracts were:

   May 25, 2016 — 160 days prior to the Date of Failure

   November 2, 2015 — 365 days prior to the Date of Failure.
4. The delivery of the grain occurred within 365 days of the date of Failure.
5. The grain subject to the Contract, defined below, was priced after May 25, 2016.

FINDINGS OF FACT

1. The Claimant has waived any claim for compensation for 1,858.56 which was the subject of a price later contract which is not at issue here.
2. The Claimant and SGI Agri-Marketing, LLC were the parties to a price later contract (the "Contract") effective on March 15, 2015.
3. The quantity of grain to be delivered pursuant to the Contract was 15,508.25 bushels, all of which was delivered as agreed.
4. The grain described in the Contract was delivered to SGI Agri-Marketing, LLC on various dates, the last of which was January 26, 2016.
5. A Purchase Confirmation was issued by SGI Agri-Marketing, LLC to Miller on May 18, 2016.
6. The Claimant signed the Purchase Confirmation on June 6, 2016 assenting to the terms contained therein.
7. The pricing of the grain was agreed to in the Purchase Confirmation.

IT IS, THEREFORE, ORDERED THAT:

1. The Claim Determination issued by the Department is REVERSED;

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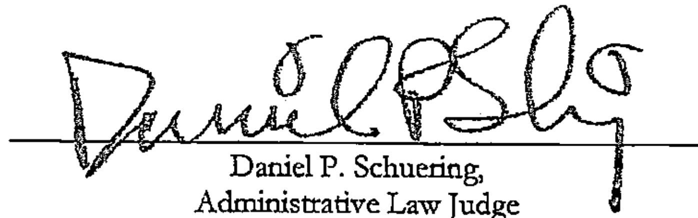
2. The Claimant's Claim for 15,508.25 bushels is FOUND to be valid for the price later contract dated March 15, 2018;
3. The pricing of the grain subject to the Contract is DETERMINED to be as set forth on the Purchase Confirmation dated May 18, 2016;
4. Claimant's Counsel is DIRECTED to submit to Department Counsel revised calculations of the value of the grain as set forth in this Order within five (5) business days of the date hereof;
5. The Department is DIRECTED to confirm the Claimant's calculations, or inform the Claimant's Counsel of any discrepancy therein, with three (3) business days following the date of receipt from Claimant's Counsel;
6. Upon confirmation of the value of the grain, the Department is DIRECTED to make payment to the Claimant as provided in the Grain Code.

This Final Administrative Decision constitutes the final administrative action of the Department as to this appeal within the meaning of the Administrative Review Law, 735 ILCS 56/3-101, et seq. The administrative rules pertaining to this matter do not require a motion for reconsideration, or similar procedural action, to be filed before the exercise of rights pursuant to the Administrative Review Law. The parties to this matter are as follows:

Petitioner:	Agency:
	Illinois Department of Agriculture
Robert J. Miller	John R. Block Building
2266 N 24th Road	801 East Sangamon Avenue
Marseilles, IL 61341	Springfield, IL 62702

BUREAU OF ADMINISTRATIVE HEARINGS

Monday, July 23, 2018



Daniel P. Schuering,
Administrative Law Judge

FILED
4/7/2021 3:17 PM
KAMALEN JOHNSON-ANDERSON
CLERK OF THE CIRCUIT COURT
FORD COUNTY, ILLINOIS

APPEAL TO THE FOURTH APPELLATE COURT
FROM THE CIRCUIT COURT OF FORD COUNTY

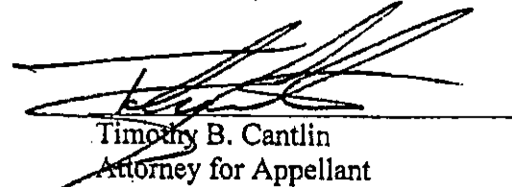
E-FILED
Transaction ID: 4-21-0204
File Date: 4/12/2021 3:39 PM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

ROBERT J. MILLER,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 2019 - MR - 16
	)	
ILLINOIS DEPARTMENT OF AGRICULTURE	)	
	)	
Defendant-Appellee.	)	

NOTICE OF APPEAL

Robert J. Miller, Plaintiff-Appellant in the above-entitled cause appeals to the Appellate Court of Illinois, Fourth District, pursuant to Supreme Court Rule 303(a), from the Order entered by the Honorable Matthew Fitton from the Circuit Court of the Eleventh Judicial Circuit, Circuit Court of Ford County, Illinois entered in this cause on March 15, 2021, in favor of the Defendant-Appellee and against the Plaintiff-Appellant, in his brief for Administrative Review, which was the final order entered March 15, 2021 wherein it was determined that 1) the IDOA validly denied Plaintiff compensation from the Fund because neither delivery nor pricing occurred within 160 days of SGI's failure; 2) Plaintiff's arguments raised in Plaintiff's brief in support of his Complaint for Administrative Review were unpersuasive.

Plaintiff- Appellant requests that the Appellate Court for the Fourth District reverse the Order dated March 15, 2021 and award all other relief it shall deem just and appropriate.



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SUBMITTED - 22368101 - Anna Gottlieb - 4/19/2023 4:46 PM

03

No. 128508

E-FILED
7/25/2022 10:17 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

IN THE
SUPREME COURT OF ILLINOIS

ROBERT MILLER, Plaintiff-Respondent, v. ILLINOIS DEPARTMENT OF AGRICULTURE, Defendant-Petitioner.	) Petition for Leave to Appeal) from the Appellate Court of) Illinois, Fourth Judicial District,) No. 4-21-0204,)) Appeal from the Circuit Court of) the Eleventh Judicial Circuit,) Ford County, Illinois, No. 2019) MR 16,))) The Honorable) MATTHEW J. FITTON,) Judge Presiding.

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR LEAVE TO APPEAL

Defendant-Petitioner Illinois Department of Agriculture, through its attorney Kwame Raoul, Attorney General of the State of Illinois, hereby moves for an extension of time to file its petition for leave to appeal from August 9, 2022, to and including September 13, 2022. The verification by certification of Anna W. Gottlieb, Assistant Attorney General, is attached in support of this motion.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

By: /s/ Anna W. Gottlieb
ANNA W. GOTTLIEB
Assistant Attorney General

SUBMITTED - 18709409 - Anna Gottlieb - 7/25/2022 10:17 AM

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CYNTHIA A. GRANT
Clerk of the Court

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FIRST DISTRICT OFFICE
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TDD: (312) 793-6185

August 02, 2022

Anna Wolonciej Gottlieb
Office of the Illinois Attorney General
100 West Randolph Street, 12th Floor
Chicago, IL 60601

In re: Miller v. Department of Agriculture
128508

Today the following order was entered in the captioned case:

Motion by Petitioner for an extension of time for filing a Petition for Leave to Appeal to and including September 13, 2022. Allowed.

Order entered by Justice Holder White.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

cc: Appellate Court, Fourth District
Timothy Bernard Cantlin

SUBMITTED - 22368101 - Anna Gottlieb - 4/19/2023 4:46 PM

No. 128508

IN THE
SUPREME COURT OF ILLINOIS

ROBERT MILLER,	)	Petition for Leave to Appeal
	)	from the Appellate Court of
Plaintiff-Respondent,	)	Illinois, Fourth Judicial District,
	)	No. 4-21-0204,
	)	
	)	Appeal from the Circuit Court of
v.	)	the Eleventh Judicial Circuit,
	)	Ford County, Illinois, No. 2019
	)	MR 16,
	)	
ILLINOIS DEPARTMENT OF	)	
AGRICULTURE,	)	The Honorable
	)	MATTHEW J. FITTON,
Defendant-Petitioner.	)	Judge Presiding.

PETITION FOR LEAVE TO APPEAL

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SUPREME COURT OF ILLINOIS

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(312) 793-1332
TDD: (312) 793-6185

November 30, 2022

In re: Robert Miller, Appellee, v. The Department of Agriculture, Appellant. Appeal, Appellate Court, Fourth District.
128508

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause. We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed with the Clerk's office.

With respect to oral argument, a case is made ready upon the filing of the appellant's reply brief or, if cross-relief is requested, upon the filing of the appellee's cross-reply brief. Any motion to reschedule oral argument shall be filed within five days after the case has been set for oral argument. Motions to reschedule oral argument are not favored and will be allowed only in compelling circumstances. The Supreme Court hears arguments beginning the second Monday in September, November, January, March, and May. Please see Supreme Court Rule 352 regarding oral argument.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on April 19, 2023, I electronically filed the foregoing **Brief and Appendix of Defendant-Appellant** with the Clerk of the Court for the Illinois Supreme Court by using the Odyssey eFileIL system.

I further certify that the other participant in this matter, named below, is a registered service contact on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

Timothy Cantlin, tcantlin@cantlinlaw.com

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Anna W. Gottlieb
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