No. 128508

IN THE
SUPREME COURT OF ILLINOIS

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

REPLY BRIEF OF DEFENDANT-APPELLANT

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ARGUMENT

I. Miller has not identified any reason to reverse the Director's decision.

A. Miller has not shown how his reading affords the language of the Grain Code its plain meaning, or, alternatively, why this Court should adopt his reading over the Department's.

In his response, Miller does not explain how his interpretation of section 10-15(e) of the Grain Code, 240 ILCS 40/10-15(e) (2022), affords the provision its plain meaning. As noted in the opening brief, AT Br. 28-29, a court will not read additional language into a statute. *See People v. Clark*, 2019 IL 122891, ¶ 47 (court may not "rewrite a statute to add provisions or limitations the legislature did not include").[1] Nevertheless, this is what Miller asks of this Court, by advocating for an interpretation of the provision that adds the grain dealer as the actor who prices the grain, where that language appears nowhere on the face of the statute.

To reiterate, section 10-15(e) states that delivered grain, for which no contract has been executed within 30 days of delivery, "shall be priced" at the closing market price on the business day following the 29th day after delivery and that pricing occurs on the business day following 30 days from the date of

[1] This brief cites the Department's opening brief as "AT Br. ___" and Miller's appellee brief as "AE Br. ___." This brief also cites the common law record as "C___" and the appendix to the opening brief as "A___."

delivery. 240 ILCS 40/10-15(e) (2022).[2] Miller does not dispute that the verb "price" is defined as "[t]o fix . . . the price of" an item, and that the phrase "be priced (at)" is defined as "hav[ing] a certain monetary value." Oxford English Dictionary, "Price" (verb), bit.ly/3TvTilV; Cambridge Dictionary, "be priced (at)," bit.ly/3nkbUJk. Thus, the only reading that gives the language its plain meaning — and the only reasonable reading — is that 30 days after delivery, the price of the delivered grain will be "fix[ed]" to the relevant closing market price, and that price goes into effect the next business day. *See* AT Br. 24-25. By its plain terms, the price goes into effect as a function of no contract having been signed within 30 days of delivery — and not as the result of an unmentioned action by unnamed party, including the grain dealer.

Miller asserts several arguments that the Department's plain language reading is unreasonable or absurd. As set forth below, however, it is neither, and thus should govern. But even if section 10-15(e) were ambiguous and Miller's reading, which adds the grain dealer as an actor where the General Assembly omitted this language, were an alternate reasonable reading, the Department's reasonable interpretation should still prevail. Indeed, Miller

[2] For reference, the relevant language of section 10-15(e) is provided here: "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." 240 ILCS 40/10-15(e) (2022).

fails to contend with this Court's long-standing precedent that in the event of two reasonable readings, this Court will defer to the Department's reasonable reading. *See* AE Br. 17-18, *see also* AT Br. 38-39; *Ill. Bell Tel. Co. v. Ill. Com. Comm'n*, 362 Ill. App. 3d 652, 657 (4th Dist. 2022) ("court will not substitute its own construction of a statutory provision for a reasonable interpretation adopted by the agency charged with the statute's administration") (quoting *Church v. State*, 164 Ill. 2d 153, 162 (1995)). Because there is no reason to depart from this principle, this Court should defer to the Department's reasonable interpretation of section 10-15(e).

To begin, Miller asserts that if it were the case that the General Assembly intended pricing to be automatic, the language should instead be that the grain "prices" or that it "shall price." AE Br. 14 (citing *Miller v. Dep't of Agric.*, 2022 IL App (4th) 210204, ¶ 30). But he provides no response to the Department's point that this construction illogically makes the grain the subject of section 10-15(e). AT Br. 26. Specifically, under those two proposed alternative constructions, the grain would be "fixing" the price — a result that does not make sense. *Id*.

Miller next points to provisions of the Grain Code that place requirements on the grain dealer, but his citation of these undercuts his argument. AE Br. 14-15; *see also* AE Br. 10-12. While the clause at issue, setting forth automatic pricing of the grain, does not identify any actor, 240 ILCS 40/10-15(e) (2022), the provisions Miller cites do. First, he cites the

requirement that duplicate copies of invoices for printing price later contracts "shall be" forwarded to the Department. AE Br. 14-15 (citing 240 ILCS 40/10-15(a)(3) (2022)). That provision identifies the actor as the "person authorized to print those contracts by the Department." 240 ILCS 40/10-15(a) (2022). Similarly, he points to various requirements found at section 10-15(b) and (h), as well as a separate sentence in section 10-15(e), and 10-10(a)(1) and 10-10(d) — each of which identifies the grain dealer as the actor. AE Br. 10-11, 14-16 (citing 240 ILCS 40/10-15(b), (e), (h) (2022); 240 ILCS 40/10-10(a)(1), (d) (2022)). Indeed, as pointed out in the Department's opening brief, AT Br. 30-31, the absence of an actor in the provision at issue, where these other provisions identify the grain dealer, underscores the legislature's intent that no such actor is required for the grain to be priced as a matter of law. The opening brief's argument on this point shows that Miller's assertion that the Department is looking at the provision in "isolation," AE Br. 10, 13, is not accurate.

Miller also relies on the title of article 10 of the Grain Code, "Duties and Requirements of Licensees," to argue that the plain meaning of section 10-15(e) must be that grain dealers price the grain, AE Br. 11-12, despite the General Assembly not so stating. This Court has been clear that titles or headings are not part of the plain language analysis. *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 while it is true that the article generally outlines duties of licensees — meaning both grain dealers and warehousemen — there are provisions in the article that identify events not directly attributable to licensees. For example, section 10-15(k) discusses situations when *producers* select a price for grain as outlined in a price later contract, an event that triggers the grain dealer's duty to memorialize the selected price. 240 ILCS 40/10-15(k) (2022). It would thus be error to assume that every provision of article 10 only speaks to actions by licensees, such as grain dealers, particularly when the language is silent as to who acts.

Miller also argues that the pricing provision of section 10-15(e) cannot be automatic because the section contains a requirement for the grain dealer to provide notice that a price has been set. AE Br. 15. As an initial matter, both Miller and the appellate court discussed these as two separate events. *Id.* (citing *Miller*, 2022 IL App (4th) 210204, ¶ 30). And neither the appellate court decision nor Miller explain why the requirement for the grain dealer to provide notice must mean that the grain dealer is responsible for setting the price. *Cf.* 240 ILCS 40/10-15(k) (2022) (providing that the producer selects the price and the grain dealer then sends confirmation of price selection in some circumstances).

Miller also alludes to a lack of fairness that could result if the grain is priced as a matter of law but the producer does not obtain notice from the grain dealer. AE Br. 17-18. But his analysis ignores a practical consideration

of grain sales: that the producer is the one who delivers the grain to the grain dealer, *see* C141-55 (receiving tickets show that Miller delivered grain to SGI), thereby initiating the 30-day timeframe to enter into a price later contract. Only if that time lapses without a price later contract being signed is the grain priced as a matter of law. The producer knows when the automatic pricing may occur because he is the one to have performed the triggering event by delivering the grain. Thus, nothing occurs without the producer's knowledge, alleviating any fairness concerns.

Moreover, a notice provision that confirms an automatic event is consistent with Illinois law. Under the Illinois Vehicle Code, for example, a driver's license is automatically suspended on the 46th day after an individual received notice of a summary suspension at the time of arrest. 625 ILCS 5/11-501.1(g) (2022). But the Illinois Vehicle Code also requires that the Secretary of State "confirm the statutory summary suspension . . . by mailing a notice of the effective date of the suspension." 625 ILCS 5/11-501.1(h) (2022). Courts have repeatedly held that there is no due process problem with a delayed confirmation of the automatic suspension because the confirmation merely confirmed the automatic event that the individual knew would occur. *People v. Morales*, 2015 IL App (1st) 131207, ¶ 23; *People v. Swanson*, 2021 IL App (3d) 190196, ¶ 15.

And while Miller argues that in this case, he had no knowledge that the grain was priced on February 26, 2016, and that the Department "came up

with this theory" in response to his claim, AE Br. 17, he provides no support for this notion. Moreover, his claim that he had no knowledge of the pricing date is inconsistent with the fact that the timeline for pricing, in the event of an unsigned contract, is set out in the statute, and that he is presumed to have knowledge of the law. *See McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶ 39.

Relatedly, Miller argues that it would also be unfair to enforce the pricing provision against him because the Grain Code is to be liberally construed in favor of claimants. AE Br. 18, 20; *see* 240 ILCS 40/1-5 (2022). Although Miller correctly notes that the Grain Code is to be liberally construed in favor of claimants, as noted in the opening brief, AT Br. 37, Miller has not established that his construction would favor claimants as a general matter. Along with the limitations on risk that the automatic pricing provision provides, *see* AT Br. 32-37, other cases may not involve any type of signed document, as here, within the 160-day window. While the Department does not agree that the purchase confirmation signed within the 160-day window entitles Miller to recovery, even assuming it did, such a purchase confirmation will not necessarily be present in other cases where section 10-15(e) applies. And without a signed purchase confirmation, producers with unsigned price later contracts would have no 160-day period for recovery triggered if section 10-15(e) is not read to go into effect as a matter of law. Thus, their entitlement to recovery would hinge on the grain dealer setting the price,

rather than this occurring automatically as a matter of law, making it generally harder for producers to recover.

Miller next argues that the Department "loses sight of" the Uniform Commercial Code's requirement of "some writing" to set the price. AE Br. 16 (citing 810 ILCS 5/2-201 (2022)). In support, Miller cites the statute of frauds provision of the UCC, which requires some form of memorialization in writing to enforce a sale of goods against a party for more than $500. 810 ILCS 5/2-201(1) (2022). But there is no requirement that any portion of the contract be in writing where goods have already been delivered and accepted, *see* 810 ILCS 5/2-201(3)(c) (2022), like here, *see* C141-55. In any event, Miller's citation of the UCC is inapposite here, where the dispute is not over whether a sale of goods occurred between Miller and SGI, but rather over Miller's ability to recover under the Grain Code and its provisions.

Further, in an apparent attempt to answer the question raised by the Department's brief — namely, what is the purported action that must be taken by the grain dealer to set the price under Miller's construction, AT Br. 28-29 — Miller argues that "[o]bviously" grain cannot be priced "except for action taken by the [l]icensees." AE Br. 15. He further states that "an affirmative action has to be taken by the licensed grain dealer." *Id.* But he nowhere identifies what that action is. Indeed, as argued in the opening brief, AT Br. 24-26, section 10-15(e) itself fixes 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 for the grain to be priced as set forth under the provision. 240 ILCS 40/10-15(e) (2022). And while Miller points to his affirmative act of signing a purchase confirmation on June 6, 2016, AE Br. 16, this act, by him as a producer, does not address what affirmative action is to be taken by a grain dealer under the construction adopted by Miller and the appellate court. On this point, Miller also argues that there is not "a single piece of evidence that the grain was priced on February 26, 2016." AE Br. 15. But no such evidence is necessary, since the pricing happens as a matter law, and not based on an affirmative act by the grain dealer.

Miller also re-raises an argument he made for the first time in the appellate court, that he is entitled to recover under the second part of subsection 10-15(e). AE Br. 9-10, 18-20. This part of the statute provides that, in the event of a failure and an unsigned price later contract, the Department may consider grain to be sold by a price later contract if the preponderance of the evidence indicates that the grain was to be sold in such a manner. *See* 240 ILCS 40/10-15(e) (2022). To be clear, Miller's reliance on this part of section 10-15(e) does not bear on how the "shall be priced" construction of the first part of section 10-15(e) should be interpreted, but is rather an alternative theory of recovery for Miller that he did not pursue at the administrative level. As noted in the appellate court, Miller forfeited this argument by not raising it at any point during the administrative proceeding. *See Weipert v. Ill. Dep't of Pro. Regul.*, 337 Ill. App. 3d 282, 286 (4th Dist. 2003).

But even if it was not forfeited, this theory is unavailing because that portion of section 10-15(e) by its own terms only applies when a price later contract "is not signed." 240 ILCS 40/10-15(e) (2022).[3] And because the earlier part of section 10-15(e) states that grain "shall be priced" if no price later contract is signed within 30 days of delivery, this secondary clause must be limited to instances where a failure occurs within 30 days of delivery and no contract is executed. This is not the case here. Miller and SGI both signed the second price later contract, but they did so after the 30-day window in the Grain Code. Thus, at the time of the failure months later, the grain had already been priced as a matter of law for purposes of pursuing a claim from the Grain Insurance Fund and the second half of section 10-15(e) does not save Miller's claim. Additionally, Miller's claim that section 10-15(e) requires the grain dealer to tender a contract to the seller, AE Br. 19-20, is not found in that provision.

Finally, Miller cursorily dismisses the Department's point that the automatic pricing provision prevents grain from remaining unpriced for long periods of time, thereby reducing risk and ensuring that producers are paid for their crops. AE Br. 21; *see* AT Br. 34-36. Miller asserts that the Grain Code already provides protection for producers because it allows the Department to

[3] The second part of section 10-15(e) states, "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 the grain was to be sold by price later contract." 240 ILCS 40/10-15(e) (2022).

suspend the privileges of grain dealers to enter into price later contracts if they fail to adhere to the requirements of the Grain Code. AE Br. 21 (citing 240 ILCS 40/10-15(j) (2022)). In that vein, Miller claims that the Department reviews all executed price later contracts and should therefore be able to police any wrongdoing. AE Br. 21 (citing 240 ILCS 40/10-15(a)(3) (2022)). This provision, however, states that the Department requires persons authorized to print contracts, like grain dealers, to provide copies of invoices when providing new price later contract templates, not, as Miller claims, copies of executed price later contracts. 240 ILCS 40/10-15(a)(3) (2022).

And while section 10-15(j) allows the Department to discipline grain dealers who do not act in accordance with the Grain Code by taking away their privileges to enter into price later contracts, Miller fails to explain how the Department could feasibly police every time a grain dealer does not price grain within 30 days. Nor does he explain how such discipline would assist producers who have not been timely paid. It is imperative that a "farmer be able to harvest, sell and be paid for his crops with a minimum of problems in order to maintain a reasonable economic balance within the community." State of Illinois Office of the Auditor General, Ill. Dep't of Agric., Program Audit, 5 (Sept. 1980); *see* Mark W. Rasmussen, *Grain Elevator Bankruptcy — Has Illinois Successfully Provided Security to Farmers?*, 1983 S. Ill. U. L.J. 337, 338 (1983). For these reasons, producers are most protected when section

10-15(e) is interpreted to be self-executing, as the General Assembly intended, rather than relying on a possible action of the grain dealer.

In sum, Miller has not shown how his reading affords the language its plain meaning. And even if he could so demonstrate, he has failed to show that the Department's reading is unreasonable. Because the Department's interpretation is the only one that affords the language its plain meaning, or, at the very least, is a reasonable alternative reading, it should prevail.

B. Miller has not demonstrated that the Director erred in determining he was not entitled to recover under Contract 211.

In his response, Miller concedes that Contract 211 was not rolled into Contract 215. AE Br. 22. At the administrative level, however, he repeatedly asserted that he was entitled to recover for all the bushels — 15,508.25 — in Contract 215. *See* C87, 115.[4] The Director and ALJ took this to mean that Miller's position was that the grain that had been the subject of Contract 211 had been included in Contract 215, C87, 96, and Miller never opposed this view.[5] He claims now on appeal that there is no evidence that this amount is

[4] During the administrative proceeding, Miller stated that he was entitled to recover for all the grain that was contained in "contract" P9733. *See, e.g.*, C87. P9733 is not a price later contract but rather the purchase confirmation SGI sent on May 18, 2016, C123; however, the amount of grain in this purchase confirmation tracks the amount in Contract 215, C317.

[5] The record shows that a total of 3,234.65 bushels of corn were delivered on September 25, 2015. C138-41, 156. Miller conceded below that 1,858.56 bushels delivered on this date were part of a contract executed in July 2014, and therefore not recoverable. C115. The remaining 1,376.09 bushels delivered on September 25, 2015, equal exactly the amount that was the subject of Contract 211, which only covered corn bushels delivered on that

represented in Contract 215, but that is inaccurate. As the ALJ noted, "[t]he number of bushels subject to [Contract 215] (15,505.25) [*sic*] 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." A39; *see* C138-41, 156, 317, 328. As noted in the opening brief, AT Br. 39-41, 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) (2022). This Court should thus uphold this part of the Director's decision on this point.

C. Miller fails to show that the Director reached a final administrative decision as to alternative pricing date, requiring a remand if the appellate court's interpretation of section 10-15(e) is affirmed.

In the opening brief, the Department noted that, to the extent this Court agrees with Miller's interpretation of section 10-15(e), a remand to the Department is required. AT Br. 41-43. Specifically, the Director concluded that the date of pricing was automatically set on February 26, 2016. A24. While Miller contends that the pricing date should be the date he signed the pricing confirmation, AE Br. 3, 8, 16, the Director did not reach this issue.[6] As such, there is no decision on this point for this Court to review.

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date. C328. Because Contract 215 also included grain delivered on September 25, 2015, C317, the only reasonable inference is that Contract 215 included the same 1,376.09 bushels that had previously been the subject of Contract 211.

[6] Indeed, no other date, other than the date when Miller chose to sign the purchase confirmation, C123, would allow him to recover. Even if the grain

In support of his view that this Court can review an issue not considered by the Director, Miller cites that portion of the Administrative Review Law providing that administrative review shall "extend to all questions of law and fact presented by the entire record before the court." AE Br. 23-24 (citing 735 ILCS 5/3-110 (2022)). But he cites no authority interpreting this provision to allow for consideration of issues not reached by the agency's final decisionmaker. Indeed, Illinois courts have remanded to the agency in such circumstances. *See*, *e.g.*, *Arellano v. Dep't of Hum. Servs.*, 402 Ill. App. 3d 665, 680 (2d Dist. 2010) (remanding to the agency where the final decision did not address certain issues); *see also 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."). Therefore, in the event this court agrees that February 26, 2016, is not the date of pricing because section 10-15(e) is not self-executing, this Court should remand to the Director for consideration of Miller's proposed alternative pricing date.

II. Miller's procedural arguments do not establish entitlement to recovery.

Finally, none of Miller's procedural arguments, AE Br. 24-27, entitle him to recovery under the Grain Code. First, on the email communications

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had been priced on the May 18, 2016, the day SGI issued a price confirmation listing the price the grain, C123, Miller would still not be within the 160-day recovery window, *see* AT. Br. 11 (timeline).

with the Department, Miller appears to concede that these communications do not constitute a decision on the issue from the agency. AE Br. 25 (noting communications with Miller's attorney were "not part of an administrative hearing" and that 5 ILCS 100/10-50(b) (2022) does not apply to them).

He instead appears to assert that the communications constituted a "stipulation, agreed settlement, consent order, or default" pursuant to 5 ILCS 100/10-25(c) (2022). AE Br. 25. But he provides no support for this point, thereby forfeiting it. *See PML Dev. LLC v. Vill. of Hawthorn Woods*, 2023 IL 128770, ¶ 48 n.2 ("Points not argued are forfeited . . . .") (quoting Ill. Sup. Ct. R. 341(h)(7)). In any event, as argued in the opening brief, AT Br. 44, and as undisputed by Miller, there was no offer and acceptance sufficient to create an agreement between the parties.

Miller does not renew an argument that the Department's determination of his claim was untimely, thereby forfeiting any position on this point. *See PML Dev. LLC*, 2023 IL 128770, ¶ 48 n.2.

He does, however, renew his arguments that the Director did not have authority to reconsider the ALJ's decision, AE Br. 25-26, and that he was improperly denied a hearing, AE Br. 26-27. In terms of his reconsideration argument, he fails to counter the Department's point that the administrative regulations allow for a petition for reconsideration. AT Br. 46 (citing 8 Ill. Admin. Code § 1.124). Moreover, even if it is the case, as Miller claims, that the ALJ improperly identifying SGI as a licensed warehouseman did not alter

the ALJ's analysis, AE Br. 26, Miller fails to explain why reconsideration of the ALJ's ultimate determination — that pricing occurred within the 160-day window — was impermissible.

Finally, in terms of Miller's claim that he was entitled to a hearing, he fails to articulate how the process he received — consideration of his arguments and evidence — was inadequate. Instead, he argues that the lack of a hearing here renders the Director's decision void. AE Br. 27. In that circumstance, however, he fails to explain why the ALJ's decision would not also be void or how the ALJ's decision would become the final decision of the agency. And to the extent the Director's decision is void, the proper remedy would be a remand for a hearing, rather than outright reversal of the Director's decision. *See Lamm v. McRaith*, 2012 IL App (1st) 112123, ¶¶ 26-28, 35; *Meneweather v. Bd. of Review of Emp't Sec.*, 249 Ill. App. 3d 980, 985 (1st Dist. 1992) (remanding case to Department for *de novo* hearing). But because Miller has failed to demonstrate a necessity for such a hearing, given he received adequate process, no such remand is warranted here in the event the Court agrees with the Department's interpretation of section 10-15(e).

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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October 30, 2023

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 4,442 words.

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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on October 30, 2023, I electronically filed the foregoing **Reply Brief 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.

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