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JURY ORDERS SUNKIST TO PAY CITRUS PACKER \$13.5 MILLION

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VISALIA - For 75 years, Brad Stark's family had been affiliated with Sunkist Growers Inc., boxing and shipping oranges, tangerines, grapefruits and other produce for the billion-dollar citrus cooperative at packinghouses in the Central Valley.

But in December, a Tulare County Superior Court jury awarded \$13.5 million on Stark's claims that Sunkist drove him out of business three years ago in retaliation for speaking out against management's treatment of packers affiliated with the co-op.

Lawyers for the citrus giant said the Dec. 20 verdict is unprecedented.

"I don't believe there's ever been a suit like this against Sunkist," said Michael Bierman, co-counsel for Sunkist with the Los Angeles office of Luce Forward Hamilton & Scripps.

In his complaint, Stark contended Sherman Oaks-based Sunkist forced his five packinghouses in Strathmore, Orange Cove and nearby cities to lose money and close. He said the 113-year-old fruit distributor engaged in unfair business practices that included favoring other packers over Stark and placing orders with Stark, then canceling them. Stark Packing Corp. v. Sunkist Growers Inc., 01-197891 (Tulare Super. Ct., filed 2002).

Joseph Uremovic, Stark's Fresno-based lawyer, said Sunkist violated its policy of marketing all packers' products equally. Uremovic called the jury's award "significant."

"This sends a nationwide message to agricultural cooperatives," Uremovic, a sole practitioner, said. "What it means is that, when a board of directors of a cooperative sets policy, then management had better follow that policy."

Uremovic said he plans to appeal to seek an additional \$14 million for growers who, he said, lost money because of Sunkist's favoritism to other packinghouses.

Judge Melinda Reed, who presided over the six-week trial in Visalia, barred Uremovic from seeking damages for the growers.

Uremovic also said he plans to appeal to try to collect millions more in pre-judgment interest.

Bierman, who defended Sunkist at trial, denied the company is to blame for Stark's problems and said he's disappointed with the result.

"I expect we will challenge the verdict at the trial level and on appeal," he said. "The verdict wasn't warranted by the evidence."

He said it's unclear what the grounds for appeal would be.

Lawyers assisting Bierman in the case were David R. Krause-Leemon at Luce Forward in Los Angeles and Robert D. Wilkinson of Baker Manock & Jensen in Fresno.

Sunkist, the biggest fruit and vegetable cooperative in the world, with \$1 billion in annual revenues, partners with 6,000 citrus growers in California and Arizona, according to the company's Web site.

The co-op ships 70 million cartons of fruit a year. Each carton is 40 pounds, according to Claire Smith, Sunkist's director of corporate communications.

Under Sunkist's co-op arrangement, citrus farmers, known as "grower members," sign membership agreements with the company, committing portions of their fruit for marketing by the co-op.

As part of the contract, they are supposed to pack their fruit in grower-owned facilities or packinghouses affiliated with Sunkist.

According to Uremovic's trial brief, the company gave packing outlets "weekly objectives" specifying the amount of citrus to ship.

The fruit was sold through a "marketing equity" policy under which Sunkist capped shipping amounts to avoid oversupply and keep pricing strong, the brief says.

But in the document, Uremovic said the company didn't play by the rules.

He said Stark, a 60-year-old Porterville resident and third-generation fruit packer, alerted Sunkist management that other packinghouses were manipulating the marketing equity program to gain an advantage.

Stark, Uremovic said, contended Sunkist "looked the other way" to avoid offending "cheating" packers. The company feared losing them would cut into its profits, he said.

After Stark aired his allegations to Sunkist corporate officials, Uremovic said, the company retaliated.

The co-op diverted fruit requests from Stark's packinghouses to other shippers who weren't "raising hell" at board of directors meetings, Uremovic alleged.

He contended growers stopped using Stark's facilities in favor of those packing over their limits. Uremovic also said that Sunkist canceled orders to Stark's packinghouses more often than other shippers and that the company talked a major grower out of working with Stark.

As a result, Uremovic said, Stark was forced to sever ties with Sunkist in 2001. He briefly marketed through another distributor, Uremovic said, but went out of business two years later after Sunkist undercut his sales.

"The end result was that [Stark's packinghouses] lost the business of growers who became dissatisfied with the returns they were getting," Uremovic said.

Stark said recently that his company went from shipping 6 million cartons of citrus for Sunkist in 1998 to half that amount three years later.

Bierman denied Sunkist acted inappropriately in its dealings with Stark or retaliated against him.

"I think the evidence [showed] that these packinghouses were treated just like all other packing houses affiliated with Sunkist," Bierman said.

The reason Stark went out of business, Bierman argued in his trial brief, was that he took money out of the company "for his personal use."

"He also made a number of bad investments that caused the company to lose millions of dollars," Bierman said.

Uremovic disagreed. He argued that Stark helped pay for things such as college tuition for relatives through a family trust, not the packing company.

"The key thing is that argument was the thrust of [Sunkist's] defense and the jury rejected it," Uremovic said.

The jury's \$13.5 million award included \$8 million for Stark Packing and \$5.5 million for John Norton, a co-plaintiff in the suit. Norton brought a bankruptcy claim involving a former Stark-affiliated packinghouse called Millwood Packing.

As part of its verdict, the jury also awarded Sunkist \$138,000 in its cross-complaint against Stark. The cross-complaint sought money due on an equipment lease.

Stark said he's still not working and he's unsure what he's going to do. For the time being, he said, his family survives on income from a dress shop his wife runs.

"We've been humbled into living a much more meager lifestyle," Stark said.

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