
BAGGER V. DELISHCO

ARBITRATION

Randy Betz
CFO of Delishco
(Witness called by both Delishco and Bagger, Inc.)

Witness Statement/Deposition Summary

You joined Delishco's senior management team as its CFO just a few years ago from a senior finance position in an automotive company. Delishco is a major international company, with a myriad of product lines from food and snacks to personal care items. The company's CEO and senior management team direct overall business strategy, set revenue and profit targets, and look for synergistic growth and profit opportunities between divisions.

You are familiar with Pat Delahunt's work as VP for the Delishco Beverage Products Division. While you have been briefed on the current legal dispute between Delishco Beverage Products and Bagger, Inc., you were not involved in Bagger's selection as a supplier or in negotiating the contract at issue.

It is true that, about six months before the Delishco-Bagger supply contract was prepared, you convened a management meeting to discuss strategic options for enhancing Delishco profits through greater efficiency and focusing on core business strengths. All major Delishco Division VP's were invited to the meeting, including Pat Delahunt.

At that meeting, you led the discussion through five alternative strategic plans under active consideration. One of those plans, labeled "Vertical Trim" made sense to you and was well received by others in the group at the time. As you explained it, and as its name suggested, Vertical Trim was to involve eliminating Delishco's internal vertical production integration by spinning off operations that dealt with raw produce. Fruit and vegetables would be harvested and turned into concentrate or other intermediate states by third parties and sold to Delishco, enabling greater focus on product innovation and creative marketing and design – Delishco's areas of strength. The consensus seemed to be that this idea held promise but required some further analytics for full evaluation.

In that same meeting, at least four other entirely different ideas were discussed, including one that would have involved expansion to more fruits and *more* vertical integration in other edible and inedible product lines.

If pushed, however, you would have to concede that not all of these ideas seemed equal in your mind, or in the mind of others in the management team. You believe you signaled that, absent analysis clearly demonstrating its benefits, you didn't favor



the expansion idea. By the end of the meeting discussion, “Vertical Trim” seemed to you to be among the top two or three ideas under consideration and slated for deeper analysis and number crunching. Without analysis clearly demonstrating the benefits of the expansion idea, you weren’t inclined to favor it. Vertical Trim was not mentioned in the Delishco President’s quarterly email report a month or so later, because your analysis was not yet complete.

When Pat Delahunt mentioned to you that his division was entering an exclusive supply contract for orange harvesting bags at a much lower price, you expressed approval of cost savings. You were pleased to learn that Pat planned to have one of Delishco’s lawyers in the negotiating room to accurately capture the contract terms. In fact, you made it a point to instruct the assigned lawyer, prior to the meeting, to tell them in no uncertain terms.

“The contract should not involve any guarantees. Exclusivity is fine, but just to supply whatever Delishco’s needs are at the time. We want the freedom to spin off Delishco’s orange harvesting operation if we opt for Vertical Trim.”

You believe that Pat was in the room, sitting next to the lawyer, when you issued this instruction.

Shortly after the Bagger contract period began, the analytics came back to the senior management team and the Vertical Trim idea looked very good. As you had anticipated, harvests of oranges and other crops were often unreliable due to changing weather conditions. You let the Division managers know that Delishco was going to implement Vertical Trim if a favorable price could be obtained for its harvesting operations. Shortly after that, a fruit harvesting company put in a good offer and Delishco decided to sell and let them deal with the raw food headaches.

You told Pat Delahunt he could wait six months until the end of the Florida growing season (and completion of the transaction) to inform Bagger. When the transaction was inked and the purchase complete, Pat was informed and instructed to tell Bagger that Delishco would no longer require any bags as they no longer had any orange harvesting operations.

A few months later, you learned that Bagger had filed an arbitration claim.

You know that over the next 18 months, Delishco purchased 15 million bags from Bagger, and everything worked well under the contract. It’s your understanding that Bagger’s bags were of consistently high quality, delivered on time.