

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K
CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): May 16, 2023

LIFEWAY FOODS, INC.

(Exact name of registrant as specified in its charter)

ILLINOIS (State or other jurisdiction of incorporation)	000-17363 (Commission File Number)	36-3442829 (I.R.S. Employer Identification No.)
6431 Oakton St. Morton Grove, IL (Address of principal executive offices)		60053 (Zip code)

Registrant's telephone number, including area code: (847) 967-1010

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each Class	Trading Symbol	Name of each exchange on which registered
Common Stock	LWAY	Nasdaq

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter). Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.02 Departure of Director or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On May 16, 2023, Ludmila Smolyansky (“Ms. L. Smolyansky”) notified Lifeway Foods, Inc. (the “Company”) by email that she resigned from the Board. On May 17, 2023, Ms. L. Smolyansky sent a letter to the Company indicating that she was resigning due to a disagreement with the Board about her opinions on the business and management (the “Letter”). A copy of the Letter is filed as Exhibit 17.1 to this Current Report on Form 8-K. Ms. L. Smolyansky did not serve on any committees of the Board.

The Company strongly disagrees with the assertions made in the Letter including the characterization by Ms. L. Smolyansky of the financial trends of the Company, activity of the Board and committees of the Board, statements and actions of management, the independence of directors and Ms. L. Smolyansky’s and Edward Smolyansky’s actions. Contrary to Ms. L. Smolyansky’s assertions, the Company’s financial statements and disclosure included in the Company’s periodic reports filed with the Securities and Exchange Commission show a very different picture. The Company’s net sales have increased 51% from fiscal year 2019 to 2022, a compounded annual growth rate of 14.8% over the period. In addition to reporting a record fiscal year of revenue in 2022, Lifeway also started the first quarter of 2023 with the 14th consecutive quarter of strong year-over-year topline expansion. In the first quarter of 2023, the Company achieved net sales growth of 11.2% and gross profit margin increased 530 basis points year-over-year.

As previously disclosed, Ms. L. Smolyansky was elected to the Board for a term expiring at the Company’s Annual Meeting of Stockholders to be held in 2023 pursuant to that certain Settlement Agreement dated as of July 27, 2022 by and between the Company, Ms. L. Smolyansky and Edward Smolyansky, as amended on November 7, 2022 (the “Settlement Agreement”). Pursuant to the Settlement Agreement, the vacancy created by Ms. L. Smolyansky’s resignation will remain unfilled until a nominee named by Ms. L. Smolyansky and her son, Edward Smolyansky, has been appointed or nominated by the Board upon satisfaction of its regular qualification procedures. Pursuant to the Settlement Agreement, the Company is obligated to nominate, and has nominated, Ms. L. Smolyansky for reelection as director at the Annual Meeting. There will be no additional changes to the Company’s proxy statement with respect to Ms. L. Smolyansky’s nomination.

Ms. L. Smolyansky has been given an opportunity to review this disclosure, and the Company will file any responses timely received from her pursuant to Item 5.02(a)(3) of Form 8-K.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits:

Exhibit Description

No.

17.1	Letter from Ludmila Smolyansky.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

LIFEWAY FOODS, INC.

Dated: May 22, 2023

By: /s/ Eric Hanson
Name: Eric Hanson
Title: Chief Financial and Accounting Officer

Exhibit 17.1

DocuSign Envelope ID: 8BE87576-A0CE-41F9-B3D5-7654411FE621

May 18th, 2023

**MS. JULIE SMOLYANSKY, CHAIRPERSON, PRESIDENT, CEO AND SECRETARY
LIFEWAY FOODS INC.
6431 W. OAKTON ST.
MORTON GROVE, IL 60053**

BY CONFIDENTIAL FAX WITH HARD COPY TO FOLLOW BY FEDEX

RE: Resignation Effective May 18, 2023

Dear Julie:

Please consider this my notice of resignation from the Board of Directors of Lifeway Foods, Inc. (the "Company"), effective May 17, 2023.

I have made this decision based recent board meetings, combined with my view that management is not open to my insights regarding the business nor interested in responding to critiques of management's performance. Several recent calls and characterizations of board members intimidated as much.

Everything in this letter represents only my opinion even as to my recollection of events, and nothing more than that. Take them for what they are worth. Nothing is meant to assume I have the truth, only I have strong opinions, which I acknowledge are not necessarily shared by management.

During the most recent board meeting we reviewed the first quarter 2023 results, which candidly were quite disappointing and showed little or no progress on certain initiatives, and no cohesive progress in running our core business. As noted in the Company's May 15 2023 press release, sales did increase 11% quarter over quarter, but that increase has steadily shrunk. The third quarter 2022 saw a year over year increase of 27%, followed by the fourth quarter 2022 year over year increase of 15%. The most recent quarter now shows 11%. This I believe is a trend.

Not only were the results disappointing, but for me the explanations were equally if not more unacceptable, as they regurgitated the rationales offered so many other times before to the board and the public through our quarterly filings, and therefore were not reassuring that management fully understands the many systemic shortcomings occurring around them.

Each quarter in recent years memory has seen management make the same grandiose predictions for the future. A combination of excuses, then pivoting to rose colored glasses, then to the same conclusion, which is the future is so bright, and "a billion dollar" brand is just around the corner. And always a touch of the "what if's" sprinkled throughout. At some point, playing a broken record will break the record player. That's where I feel the board is today.

I am further bothered by the fact that despite poor operating results, our compensation policy is beyond past a level where total compensation is not consistent with performance. Specifically the annual stock grants given out over the years to only one executive, the CEO, as a percentage of outstanding shares are unacceptably high. Companies our size should not be giving grants of around 1% of the outstanding shares year after year. This is one of the areas our compensation policy is out of control.

However, to vote against these grants is not possible, as the internal pressure is immense to continue with these grants, as well as with the total compensation proposed by the compensation committee. I cannot vote on these matters since I am not independent, however the Chairperson of the committee deems itself to be independent, but has shown time and time again they are not. In fact, the Chairperson of the compensation committee and the Lead Independent Director is a family friend of the CEO's who vacations with her and spends significant religious Holidays together.

As for the board itself, we were each instructed upon selection that consensus is a how the board operates. That to me in the end requires papering over real differences. It is ironic that during the last three plus years on the board, there has been not one dissenting vote on the board other than mine and Edward Smolyansky's. No one else has ever voted either no nor abstained. That is the result of not truly reaching consensus, but needing to appear to be unified, and papering over differences because there is no confronting the brutal facts.

That the board is driven by such a consensus model does not serve the needs of our shareholders. Given that reality, I cannot continue in good faith to be on a board that in my opinion operates in a manner inconsistent with good practice. Likewise, I would not have agreed to take my issues outside the board room as you suggested. They belong properly put in a respectful manner in the board room. If you have objections to my manner and approach, I assure you I could have modulated that, but it is hard when probing questions are met with the same recitation heard so many times before. The probing is necessary to get to the facts, since deep and thoughtful insights and analyses are not forthcoming.

I have also been very troubled that the board has permitted there to be meetings before, during, and after the board meeting, where individual board members are privy to information not available to the entire board. This is intended to, and does undermine the effectiveness and integrity of the board and the practice should be stopped. The board is not constituted by itself on behalf of the shareholders to do as you request and let "management propose and the board dispose." Much work has been done on building effective communities such as a board, and when differences are papered over, or where people do not bring forth their true issues in the board room, I find that yet another signal that the management does not want to hear the true critical input in front of a well functioning board; nor is management ready to be confronted with all the brutal facts of its performance. This has been really the case during the last five quarters.

For my part I believe the board's role is to provide active, critical, probing, supportive, useful, constructive, insightful, helpful thoughts on many of the critical activities faced by management as **the board member individually and collectively view appropriate**. The charters are not acts of fiction.

My comments on a more collaborative approach to the audit and corporate governance committee were taken directly from its charter published on our website, and yet it was said in so many words that it was impossible to follow the spirit or letter of the charter. I suggest people read the charter and either affirm its intent, or throw it out. And by confirming its intent, I mean in spirit and letter. It will serve you well.

To end on a more positive note, please understand. The inner conflict between my personal values being very compromised by the actions of management, and to a lesser extent the board, necessitates this action. This is an ethical decision which I have weighed heavily on. I, along with your father Michael, co-founded Lifeway Foods over three decades ago, and I of course have a personal connection to it, so this decision does not come lightly, and I am happy to have more free time to spend with my newborn grandson. I am certain your management team will welcome my

departure. The best thing is to get rid of the nuisance who is asking the questions that do require the hard answers – asked not solely for me but for **your** shareholders.

I wish you and the other members of the Board and the Company the very best in the months and years ahead, as I have enjoyed and learned much from this experience and from my fellow board members and management.

Sincerely,

DocuSigned by:



/s/ **Ludmila Smolyansky**

Ludmila Smolyansky