

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. 12-0600
)
Mark Kasmiersky,)
) **Order Dismissing Purported**
Respondent) **Appeal Petition**

PROCEDURAL HISTORY

On March 21, 2013, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] issued a Default Decision and Order in which the Chief ALJ: (1) concluded Mark Kasmiersky violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act] and the regulations issued under the Packers and Stockyards Act (9 C.F.R. pt. 201) [hereinafter the Regulations]; and (2) imposed sanctions on Mr. Kasmiersky for his violations of the Packers and Stockyards Act and the Regulations.¹

On May 28, 2013, Mr. Kasmiersky appealed the Chief ALJ's Default Decision and

¹Chief ALJ's Default Decision and Order at 4-5.

Order to the Judicial Officer. On June 4, 2013, the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, filed Complainant's Opposition to Respondent-Appellant's Appeal Petition. On June 3, 2014, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

DISCUSSION

Mr. Kasmiersky's May 28, 2013, filing states in its entirety, as follows:

To Whom It May Concern:

I am writing to appeal the Decision and Order that was issued against me by Chief Administrative Law Judge Peter M. Davenport. I am in the process of getting a divorce. With the help of my parents, I am trying to raise my three daughters. I would truly be thankful if you would reconsider the Decision and Order that was issued against me. If you would like to discuss this decision with me in further detail, please feel free to contact me at (***) ***_****.^[2] Again, I would truly appreciate any support you could give me.

Sincerely,
Mark Kasmiersky
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The rules of practice applicable to this proceeding³ set forth requirements for an appeal

²Mr. Kasmiersky provided a telephone number, which may be the telephone number for his residence; therefore, based upon my concern for Mr. Kasmiersky's privacy, I have redacted the telephone number provided by Mr. Kasmiersky in his May 28, 2013, filing.

³The rules of practice applicable to this proceeding are the Rules of Practice Governing

petition, as follows:

Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

7 C.F.R. § 1.145(a). Mr. Kasmiersky's May 28, 2013, filing does not identify any error by the Chief ALJ, does not identify any portion of the Chief ALJ's decision or any ruling by the Chief ALJ with which Mr. Kasmiersky disagrees, and does not allege any deprivation of rights. In short, Mr. Kasmiersky's May 28, 2013, filing does not remotely conform to the requirements for an appeal petition in 7 C.F.R. § 1.145(a).

I have long held that purported appeal petitions which do not remotely conform to the requirements of 7 C.F.R. § 1.145(a) are dismissed;⁴ therefore, Mr. Kasmiersky's purported

⁴*In re Oasis Corp.* (Order Dismissing Purported Appeal Pet.), __ Agric. Dec. __ (Jan. 25, 2013); *In re Billy Mike Gentry* (Order Dismissing Purported Appeal Pet.), __ Agric. Dec. __ (Mar. 18, 2009); *In re Kermit Breed* (Order Dismissing Purported Appeal), 50 Agric. Dec. 675 (1991); *In re Bihari Lall* (Order Dismissing Purported Appeal), 49 Agric. Dec. 895

appeal petition is dismissed. Moreover, since it is now too late to file an appeal (7 C.F.R. §§ 1.139, .145(a)), the Chief ALJ's March 21, 2013, Default Decision and Order became final and effective 35 days after the Hearing Clerk served Mr. Kasmiersky with the Default Decision and Order. The Hearing Clerk served Mr. Kasmiersky with the Chief ALJ's Default Decision and Order on May 9, 2013;⁵ therefore, the Chief ALJ's Default Decision and Order became final and effective on June 13, 2013.

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Kasmiersky's purported appeal from the Chief ALJ's March 21, 2013, Default Decision and Order is dismissed.
2. The Chief ALJ's March 21, 2013, Default Decision and Order became final and effective June 13, 2013.

Done at Washington, DC

June 9, 2014

(1990).

⁵Memorandum to the File, dated May 9, 2013, and signed by L. Eugene Whitfield, Hearing Clerk.

William G. Jenson
Judicial Officer