

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) Docket No. 13-0260
)
Kriegel, Inc., and)
Laurance Kriegel,)
)
Petitioners) **Order Dismissing Appeal**

PROCEDURAL HISTORY

On May 28, 2013, Kriegel, Inc., and Laurance Kriegel [hereinafter Petitioners] filed a pleading with the United States Department of Agriculture, Office of Administrative Law Judges, entitled “Review of the NOP Opinion Dated May 13, 2013” [hereinafter Petition]. Petitioners assert the Texas Department of Agriculture, operating as an accredited certifying agency of the United States Department of Agriculture, National Organic Program, discriminated against Petitioners on the basis of religion and race. Petitioners request an order requiring the Texas Department of Agriculture to approve Petitioners’ organic certification. On July 1, 2013, the Agency¹ filed “Agency Response to Petitioners’ Request

¹Based upon the record, I infer the “Agency” is the Agricultural Marketing Service,

for Review of the NOP Opinion Dated May 13, 2013” in which the Agency contends the Office of Administrative Law Judges does not have jurisdiction to consider Petitioners’ claim of discrimination and urges the Office of Administrative Law Judges to dismiss the proceeding for lack of jurisdiction.

On July 16, 2013, Administrative Law Judge Janice K. Bullard [hereinafter the ALJ] issued a “Decision and Order Dismissing Petition”: (1) concluding the Office of Administrative Law Judges has no jurisdiction to consider Petitioners’ claim of discrimination; (2) denying Petitioners’ Petition; and (3) dismissing the proceeding.

On July 23, 2013, Petitioners filed “Appellants Agency Response to Petitioner’s [sic] Request for Review of the NOP Opinion Dated May 13, 2013” and on August 5, 2013, Petitioners filed “Appeal to the Decision and Order Dismissing Petition.” On August 15, 2013, the Agency filed “Agency Response to Petitioners’ Appeal to the Judicial Officer.” On August 20, 2013, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

DECISION

The Secretary of Agriculture has delegated authority to the Judicial Officer to act as final deciding officer in the adjudicatory proceedings identified in 7 C.F.R. § 2.35.

Petitioners do not assert that this proceeding is an adjudicatory proceeding identified in 7 C.F.R. § 2.35, and, after a careful review of the record, I find the proceeding instituted by Petitioners is not one of the proceedings identified in 7 C.F.R. § 2.35. Therefore, I have no jurisdiction to hear Petitioners' appeal of the ALJ's "Decision and Order Dismissing Petition" and Petitioners' appeal petition must be dismissed for lack of jurisdiction.

For the foregoing reasons, the following Order is issued.

ORDER

Petitioners' appeal petition is dismissed. This Order shall be effective upon service on Petitioners.

Done at Washington, DC

August 22, 2013

William G. Jenson
Judicial Officer