

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) OFPA Docket No. 13-0196
)
Michael Tierney, d/b/a)
Birchwood Farms,)
) **Order Dismissing Purported**
) **Appeal Petition**
Respondent)

PROCEDURAL HISTORY

Administrative Law Judge Janice K. Bullard [the ALJ] issued *In re Michael Tierney*, ___ Agric. Dec. ___ (Oct. 9, 2014), in which the ALJ: (1) concluded Michael Tierney violated the National Organic Program Regulations (7 C.F.R. §§ 205.1-.699); (2) ordered Mr. Tierney to cease and desist from violating the National Organic Program Regulations; and (3) revoked Mr. Tierney's organic certification for a period of not less than five years. On November 18, 2014, Mr. Tierney appealed *In re Michael Tierney*, ___ Agric. Dec. ___ (Oct. 9, 2014), to the Judicial Officer. On December 4, 2014, the Administrator, Agricultural Marketing Service, United States Department of Agriculture, filed Complainant's Response to Respondent's Request for an Appeal to the Judicial Officer, and, on December 5, 2014, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

DISCUSSION

Mr. Tierney's November 18, 2014, filing states in its entirety, as follows:

USDA
Office of Hearing Clerk
Room 1031, South Building
1400 Independence Avenue SW
Washington, DC 20250-9200

Sent via Certified mail and e-mail

12 November 2014

Re: Doc No. 13-0196
Michael P. Tierney
Birchwood Farm

Request for an appeal to the Judicial Officer for a hearing before the Secretary of Agriculture.

Please forward proper procedure to follow.

Respectfully,
/s/
Michael P. Tierney

The rules of practice applicable to this proceeding¹ set forth requirements for an appeal petition, as follows:

§ 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

¹The rules of practice applicable to this proceeding are the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [the Rules of Practice].

§ 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. Tierney's November 18, 2014, filing does not identify any error by the ALJ, does not identify any portion of the ALJ's Decision and Order or any ruling by the ALJ with which Mr. Tierney disagrees, and does not allege any deprivation of rights. In short, Mr. Tierney's November 18, 2014, 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;² therefore, Mr. Tierney's purported appeal petition is dismissed.

²*In re Joseph M. Estes* (Order Dismissing Purported Appeal Pet. and Cross-Appeal), __ Agric. Dec. __ (June 12, 2014); *In re Mark Kasniersky* (Order Dismissing Purported Appeal Pet.), __ Agric. Dec. __ (June 9, 2014); *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 (1990).

Moreover, even if I were to find that Mr. Tierney's November 18, 2014, filing conformed to the requirements for an appeal petition in 7 C.F.R. § 1.145(a) (which I do not so find), I would deny Mr. Tierney's appeal petition because it is late-filed. The Rules of Practice provide that an administrative law judge's written decision must be appealed to the Judicial Officer by filing an appeal petition with the Hearing Clerk within 30 days after service.³ The Hearing Clerk served Mr. Tierney with the ALJ's Decision and Order on October 16, 2014;⁴ therefore, Mr. Tierney was required to file his appeal petition with the Hearing Clerk no later than November 17, 2014.⁵ Instead, Mr. Tierney filed his purported appeal petition with the Hearing Clerk on November 18, 2014.

For the foregoing reasons, the following Order is issued.

ORDER

Mr. Tierney's November 18, 2014, purported appeal petition is dismissed.

³7 C.F.R. § 1.145(a).

⁴United States Postal Service Domestic Return Receipt for article number 7012 3460 0003 3833 9202.

⁵Thirty days after the date the Hearing Clerk served Mr. Tierney with the ALJ's Decision and Order was Saturday, November 15, 2014. The Rules of Practice provide, when the time for filing a document or paper expires on a Saturday, the time for filing shall be extended to the next business day, as follows:

§ 1.147 Filing; service; extensions of time; and computation of time.

....

(h) *Computation of time.* Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That, when such time expires on a Saturday, Sunday, or Federal holiday, such period shall be extended to include the next following business day.

7 C.F.R. § 1.147(h). The next business day after Saturday, November 15, 2014, was Monday, November 17, 2014.

Done at Washington, DC

December 9, 2014

William G. Jenson
Judicial Officer