

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) OFPA Docket No. 15-0050
) OFPA Docket No. 15-0051
Kriegel, Inc., and)
Laurance Kriegel,)
)
Respondents) **Order Denying Petition to Reconsider**

PROCEDURAL HISTORY

On November 20, 2015, Kriegel, Inc., and Laurance Kriegel [Respondents] filed a “Motion for Reconsideration Response to Decision and Order” [Petition to Reconsider] requesting that I reconsider *Kriegel, Inc.*, OFPA Docket Nos. 15-0050 and 15-0051, 2015 WL 7687428 (U.S.D.A. Oct. 29, 2015). The Hearing Clerk served the Associate Administrator, Agricultural Marketing Service, United States Department of Agriculture [Administrator], with Respondents’ Petition to Reconsider on November 20, 2015,¹ and, pursuant to the rules of practice applicable to this proceeding,² the Administrator was required to file with the Hearing Clerk a reply to Respondents’ Petition to Reconsider no later than December 10, 2015.³ The Administrator failed to file a timely reply to Respondents’ Petition to Reconsider, and, on

¹Hearing Clerk’s Office Proof of Service, dated November 20, 2015.

²The 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) [Rules of Practice].

³7 C.F.R. § 1.146(b).

December 14, 2015, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for a ruling on Respondents' Petition to Reconsider.

CONCLUSION BY THE JUDICIAL OFFICER

The Hearing Clerk served Respondents with *Kriegel, Inc.*, OFPA Docket Nos. 15-0050 and 15-0051, 2015 WL 7687428 (U.S.D.A. Oct. 29, 2015), on November 4, 2015.⁴ The Rules of Practice provide that a petition to reconsider must be filed within 10 days after the date of service of the Judicial Officer's decision, as follows:

§ 1.146 Petitions for reopening hearing; for rehearing or reargument of proceeding; or for reconsideration of the decision of the Judicial Officer.

(a) *Petition requisite. . . .*

. . . .

(3) *Petition to rehear or reargue proceeding, or to reconsider the decision of the Judicial Officer.* A petition to rehear or reargue the proceeding or to reconsider the decision of the Judicial Officer shall be filed within 10 days after the date of service of such decision upon the party filing the petition. Every petition must state specifically the matters claimed to have been erroneously decided and alleged errors must be briefly stated.

⁴See United States Postal Service Domestic Return Receipts for article number 7013 3020 0001 0700 7788 and article number 7013 3020 0001 0700 7795.

7 C.F.R. § 1.146(a)(3). Therefore, Respondents were required to file a petition to reconsider *Kriegel, Inc.*, OFPA Docket Nos. 15-0050 and 15-0051, 2015 WL 7687428 (U.S.D.A. Oct. 29, 2015), no later than November 16, 2015.⁵ On November 20, 2015, Respondents filed the Petition to Reconsider *Kriegel, Inc.*, OFPA Docket Nos. 15-0050 and 15-0051, 2015 WL 7687428 (U.S.D.A. Oct. 29, 2015). Respondents' Petition to Reconsider was not timely filed. Accordingly, Respondents' Petition to Reconsider is denied.⁶

⁵Ten days after the date the Hearing Clerk served Respondents with *Kriegel, Inc.*, OFPA Docket Nos. 15-0050 and 15-0051, 2015 WL 7687428 (U.S.D.A. Oct. 29, 2015), was Saturday, November 14, 2015. 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 14, 2015, was Monday, November 16, 2015.

⁶Mitchell (Order Denying Pet. to Reconsider), AWA Docket No. 09-0084, 70 Agric. Dec. 409 (U.S.D.A. Mar. 8, 2011) (denying, as late-filed, the respondent's petition to reconsider filed 24 days after the Hearing Clerk served the respondent with the decision and order); Sergiojan (Order Denying Pet. to Reconsider), AWA Docket No. 07-0119, 69 Agric. Dec. 1438 (U.S.D.A. Aug. 3, 2010) (denying, as late-filed, the respondent's petition to reconsider filed 22 days after the Hearing Clerk served the respondent with the order denying late appeal); Noble (Order Denying Motion for Recons.), A.Q. Docket No. 09-0033, 69 Agric. Dec. 518 (U.S.D.A. Jan. 20, 2010) (denying, as late-filed, the respondent's motion to reconsider filed 19 days after the Hearing Clerk served the respondent with the order denying late appeal); Stanley (Order Denying Pet. for Recons.), A.Q. Docket No. 06-0007, 65 Agric. Dec. 1171 (U.S.D.A. Dec. 5, 2006) (denying, as late-filed, a petition to reconsider filed 13 days after the date the Hearing Clerk served the respondents with the decision and order); Heartland Kennels, Inc. (Order Denying Second Pet. for Recons.), AWA Docket No. 02-0004, 61 Agric. Dec. 562 (U.S.D.A. Dec. 17, 2002) (denying, as late-filed, a petition to reconsider filed 50 days after the date the Hearing Clerk served the respondents with the decision and order); Finch (Order Denying Pet. for Recons.), AWA Docket No. 02-0014, 61 Agric. Dec. 593 (U.S.D.A. Dec. 16, 2002) (denying, as

For the foregoing reasons, the following Order is issued.

late-filed, a petition to reconsider filed 15 days after the date the Hearing Clerk served the respondent with the decision and order).

ORDER

Respondents' Petition to Reconsider, filed November 20, 2015, is denied. This Order shall become effective upon service on Respondents.

Done at Washington, DC

December 15, 2015

William G. Jenson
Judicial Officer