

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	Docket No. 09-0175
)	
Bodie S. Knapp, an individual)	
d/b/a The Wild Side; and)	
Kimberly G. Finley,)	
an individual,)	Ruling Granting the Administrator’s
)	Motion to Strike Mr. Knapp’s Petition
Respondents)	for Attorney Fees and Other Expenses

DISCUSSION

On September 27, 2011, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] filed a Decision and Order in which he ordered counsel for Bodie S. Knapp to submit a petition for award of attorney fees and expenses not later than 60 days after service of the Decision and Order on Mr. Knapp, provided the Decision and Order is not appealed (Decision and Order at 23 ¶ 3). On November 29, 2011, Mr. Knapp filed Respondent Bodie Knapp’s Petition for Attorneys Fees and Expenses pursuant to the Equal Access to Justice Act (5 U.S.C. § 504) and the Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department (7 C.F.R. §§ 1.180-1.203) [hereinafter the Rules of Practice]. On December 8, 2011, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States

Department of Agriculture [hereinafter the Administrator], filed Complainant's Motion to Strike Petition for Fees and Expenses or, in the Alternative, Response to Petition [hereinafter Motion to Strike]. On December 20, 2011, Mr. Knapp filed a response to the Administrator's Motion to Strike. On January 26, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration of, and a ruling on, the Administrator's Motion to Strike.

The Administrator argues Respondent Bodie Knapp's Petition for Attorneys Fees and Expenses is premature as the instant proceeding is on appeal to the Judicial Officer and no final agency decision has been issued (Mot. to Strike at 2). Mr. Knapp asserts Respondent Bodie Knapp's Petition for Attorneys Fees and Expenses is not premature as the Administrator's appeal petition was not timely filed.

The record establishes that the Administrator's December 5, 2011, appeal of the Chief ALJ's Decision and Order to the Judicial Officer was timely filed.¹ Mr. Knapp's response to the Administrator's appeal petition is not due until February 29, 2012,² and the Judicial Officer has not issued a final agency decision. The Equal Access to Justice

¹See: (1) the Judicial Officer's October 31, 2011, Order Extending Time for Filing the Administrator's Appeal Petition to November 28, 2011; (2) the Judicial Officer's November 29, 2011, Order Extending Time for Filing the Administrator's Appeal Petition to November 30, 2011; and (3) the Judicial Officer's November 30, 2011, Order Extending Time for Filing the Administrator's Appeal Petition to December 5, 2011.

²See: (1) the Judicial Officer's December 27, 2011, Order Extending Time for Filing Mr. Knapp's Response to the Administrator's Appeal Petition to January 30, 2012; and (2) the Judicial Officer's January 20, 2012, Order Extending Time for Filing Mr. Knapp's Response to the Administrator's Appeal Petition to February 29, 2012.

Act and the Rules of Practice provide that a party may only request attorney fees and other expenses within 30 days after final disposition of a proceeding.³ Therefore, I conclude Respondent Bodie Knapp's Petition for Attorneys Fees and Expenses is premature, and I grant the Administrator's Motion to Strike.

For the foregoing reasons, the following Ruling is issued.

RULING

1. The Administrator's Motion to Strike, filed December 8, 2011, is granted.
2. Respondent Bodie Knapp's Petition for Attorneys Fees and Expenses, filed November 29, 2011, is stricken.

Done at Washington, DC

January 31, 2012

William G. Jenson
Judicial Officer

³5 U.S.C. § 504(a)(2); 7 C.F.R. § 1.193. *See also In re Asakawa Farms*, 50 Agric. Dec. 1144, 1164 (1991), *dismissed*, No. CV-F-91-686-OWW (E.D. Cal. Sept. 28, 1993).