

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AMA Docket No. M-10-0283
)
GH Dairy, a partnership,)
) **Order Granting Motion**
) **for Reconsideration**
Petitioner)

On May 19, 2010, GH Dairy instituted this administrative proceeding by filing a Petition¹ and a “Motion for Direct Expedited Review, and Issuance of Final Adjudicatory Order, by the Secretary” [hereinafter Motion for Direct Review]. On May 28, 2010, International Dairy Foods Association [hereinafter IDFA] and National Milk Producers Federation [hereinafter NMPF] filed “Motion for Leave to Participate, and Brief of the International Dairy Foods Association and the National Milk Producers Federation in Opposition to Petitioner’s Request for Expedited, Direct Review by the Secretary” [hereinafter Motion to Intervene]. On June 28, 2010, I issued: (1) a ruling denying GH Dairy’s Motion for Direct Review; (2) an order dismissing GH Dairy’s Petition on the ground that GH Dairy seeks direct adjudicatory review by the Judicial Officer in a manner

¹GH Dairy entitles its Petition “Verified Petition for Expedited Adjudicatory Review of Final Agency Decision, Published at 75 Fed. Reg. 10122 (Mar. 4, 2010), and of Final Order, Published at 75 Fed. Reg. 21157 (Apr. 23, 2010), in National Hearing Docket No. AMS-DA-09-0007” [hereinafter Petition].

contrary to the rules of practice applicable to the instant proceeding;² and (3) a ruling dismissing IDFA and NMPF's Motion to Intervene, as moot.

On July 7, 2010, GH Dairy filed a motion requesting that I reverse my order dismissing GH Dairy's Petition on the ground that the request for direct adjudicatory review by the Judicial Officer was only a request for alternative relief.³ On July 15, 2010, the Administrator, Agricultural Marketing Service, United States Department of Agriculture, filed a "Response to Motion for Reconsideration" stating GH Dairy's Petition should be referred to an administrative law judge for issuance of a decision. On July 16, 2010, the Hearing Clerk transmitted the record to me for a ruling on GH Dairy's Motion for Reconsideration.

GH Dairy's Petition seeks to truncate the instant proceeding in a manner contrary to the Rules of Practice; however, I find GH Dairy seeks a truncated proceeding only as an alternative to conducting the instant proceeding in accordance with the Rules of Practice. Therefore, I grant GH Dairy's Motion for Reconsideration. I vacate my June 28, 2010, order dismissing GH Dairy's Petition and ruling dismissing IDFA and NMPF's Motion to Intervene, and transmit the record to the Chief Administrative Law

²The rules of practice applicable to the instant proceeding are the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted from Marketing Orders (7 C.F.R. §§ 900.50-.71) [hereinafter the Rules of Practice].

³"Motion for Reconsideration of Rulings Denying Motion for Review and Dismissing Motion to Intervene and Order Dismissing Petition" [hereinafter Motion for Reconsideration] at 2.

Judge to assign the instant proceeding to an administrative law judge to conduct the instant proceeding in accordance with the Rules of Practice.⁴

For the foregoing reasons, the following Order is issued.

ORDER

1. My June 28, 2010, order dismissing GH Dairy's Petition and ruling dismissing IDFA and NMPF's Motion to Intervene, are vacated.⁵

2. The Hearing Clerk shall transmit the record to the Chief Administrative Law Judge to assign the instant proceeding to an administrative law judge to conduct the instant proceeding in accordance with the Rules of Practice.

Done at Washington, DC

July 21, 2010

William G. Jenson
Judicial Officer

⁴This Order Granting Motion for Reconsideration does not disturb the June 28, 2010, ruling denying GH Dairy's Motion for Direct Review.

⁵See note 4.