

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) 2003 AMA Docket No. F&V 989-7
)
Lion Raisins, Inc., a California)
corporation, and Boghosian)
Raisin Packing Co., Inc.,)
a California corporation,)
) **Order Granting Petition**
Petitioners) **for Reconsideration**

PROCEDURAL HISTORY

Lion Raisins, Inc., a California corporation, and Boghosian Raisin Packing Co., Inc., a California corporation [hereinafter Petitioners], instituted this proceeding by filing a petition¹ on September 10, 2003. Petitioners instituted the proceeding under the Agricultural Marketing Agreement Act of 1937, as amended [hereinafter the AMAA]; the federal marketing order regulating the handling of “Raisins Produced From Grapes Grown In California” (7 C.F.R. pt. 989) [hereinafter the Raisin Order]; and the “Rules of

¹Petitioners entitle their Petition “Petition to Enforce and/or Modify Raisin Marketing Order Provisions/Regulations and/or Petition to the Secretary of Agriculture to Eliminate as Mandatory the Use of the USDA’s Processed Products Inspection Branch Services for All Incoming and Outgoing Raisins, as Currently Required by 7 C.F.R. §§ 989.58 & 989.59, and to Exempt Petitioner from the Mandatory Inspection Services by USDA for Incoming and Outgoing Raisins and/or any Obligations Imposed in Connection Therewith That Are Not in Accordance with Law” [hereinafter Petition].

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].

Petitioners request modification of the Raisin Order.

On October 10, 2003, the Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Respondent], filed a “Motion to Dismiss Petition.” Respondent contends the petition should be dismissed with prejudice because the Petition does not meet the requirements in section 900.52(b)(1)-(4) of the Rules of Practice (7 C.F.R. § 900.52(b)(1)-(4)) (Mot. to Dismiss Pet.). On November 7, 2003, Petitioner Lion Raisins, Inc., filed “Petitioner Lion Raisins, Inc.’s Opposition to Respondent’s Motion to Dismiss Petition,” and on December 3, 2003, Petitioner Boghosian Raisin Packing Co., Inc., filed “Petitioner Boghosian Raisin Packing Co., Inc.’s Opposition to Respondent’s Motion to Dismiss Petition.”

On July 15, 2004, Administrative Law Judge Victor W. Palmer [hereinafter the ALJ] issued an “Order Dismissing Petition with Prejudice” in which the ALJ concluded the Petition did not state a legally cognizable claim (Order Dismissing Pet. with Prejudice at 4).

On August 13, 2004, Petitioners appealed the ALJ’s Order Dismissing Petition with Prejudice to the Judicial Officer. On August 27, 2004, Respondent filed “Respondent’s Response to Petition for Appeal Filed by Petitioners Lion Raisins, Inc., and Boghosian Raisin Packing Co., Inc.” On September 7, 2004, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision, and on

October 19, 2004, I issued a Decision and Order affirming the ALJ's July 15, 2004, Order Dismissing Petition with Prejudice.²

On October 20, 2004, Respondent filed "Complainant's [sic] Petition for Reconsideration of Decision of the Judicial Officer" [hereinafter Petition for Reconsideration]. On November 8, 2004, Petitioner Lion Raisins, Inc., filed "Petitioner Lion Raisins' Opposition to Complainant's [sic] Petition for Reconsideration of Decision of the Judicial Officer." On December 2, 2004, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Respondent's Petition for Reconsideration.

²*In re Lion Raisins, Inc.*, 63 Agric. Dec. ____ (Oct. 19, 2004).

APPLICABLE STATUTORY PROVISIONS

7 U.S.C.:

TITLE—7 AGRICULTURE

.....

CHAPTER 26—AGRICULTURAL ADJUSTMENT

.....

SUBCHAPTER III—COMMODITY BENEFITS

.....

§ 608c. Orders regulating handling of commodity

.....

(6) Other commodities; terms and conditions of orders

In the case of agricultural commodities and the products thereof, other than milk and its products, specified in subsection (2) of this section orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) of this section), no others:

.....

(F) Requiring or providing for the requirement of inspection of any such commodity or product produced during specified periods and marketed by handlers.

.....

(15) Petition by handler for modification of order or exemption; court review of ruling of Secretary

(A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a

hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States in any district in which such handler is an inhabitant, or has his principal place of business, are vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 608a(6) of this title. Any proceedings brought pursuant to section 608a(6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

7 U.S.C. § 608c(6)(F), (15).

CONCLUSION BY THE JUDICIAL OFFICER ON RECONSIDERATION

Respondent seeks reconsideration of the following sentence in the October 19, 2004, Decision and Order because, Respondent contends, the sentence erroneously conveys that the AMAA mandates that marketing orders contain an inspection requirement:

However, section 8c(6)(F) of the AMAA (7 U.S.C. § 608c(6)(F)) requires that each agricultural commodity marketing order, other than milk marketing orders, contain a term requiring the inspection of the agricultural commodity subject to the marketing order.

In re Lion Raisins, Inc., 63 Agric. Dec. ____, slip op. at 15 (Oct. 19, 2004).

Although Petitioner Lion Raisins, Inc., opposes Respondent's Petition for Reconsideration, Petitioner Lion Raisins, Inc., agrees with Respondent's contention that the AMAA does not require that each agricultural commodity marketing order contain an inspection requirement.³ I agree with Respondent and Petitioner Lion Raisins, Inc., that section 8c(6) of the AMAA (7 U.S.C. § 608c(6)) does not require that each agricultural commodity marketing order contain a term requiring the inspection of the agricultural commodity that is the subject of the marketing order. Therefore, I conclude the above-quoted sentence in *In re Lion Raisins, Inc.*, 63 Agric. Dec. ____, slip op. at 15 (Oct. 19, 2004), is error, and I hereby amend the sentence to read, as follows:

However, section 8c(6) of the AMAA (7 U.S.C. § 608c(6)) provides that each agricultural commodity marketing order, other than milk marketing orders, contain one or more of the terms and conditions set forth in section 8c(6)(A)-(J) of the AMAA (7 U.S.C. § 608c(6)(A)-(J)). One of the terms or conditions in section 8c(6) of the AMAA (7 U.S.C. § 608c(6)) is an inspection requirement, which is set forth in section 8c(6)(F) of the AMAA (7 U.S.C. § 608c(6)(F)).

This amendment of the October 19, 2004, Decision and Order does not affect the disposition of the proceeding; except that, the effective date of the Order is the date stated in the Order in this Order Granting Petition for Reconsideration. Therefore, for the foregoing reason and the reasons set forth in *In re Lion Raisins, Inc.*, 63 Agric. Dec. ____ (Oct. 19, 2004), the following Order should be issued.

³Petitioner Lion Raisins, Inc., states "Petitioner Lion recognizes that a marketing order is not *required* to have an inspection requirement." (Petitioner Lion Raisins' Opposition to Complainant's [sic] Petition for Reconsideration of Decision of the Judicial Officer at 2 (emphasis in original).)

ORDER

1. Petitioners' Petition, filed September 10, 2003, is dismissed with prejudice.
2. This Order shall become effective on the day after service on Petitioners.

RIGHT TO JUDICIAL REVIEW

Petitioners have the right to obtain review of this Order in any district court of the United States in which district Petitioners are inhabitants or have their principal places of business. A bill in equity for the purpose of review of this Order must be filed within 20 days from the date of entry of this Order. Service of process in any such proceeding may be had upon the Secretary of Agriculture by delivering a copy of the bill of complaint to the Secretary of Agriculture.⁴ The date of entry of this Order is December 7, 2004.

Done at Washington, DC

December 7, 2004

William G. Jenson
Judicial Officer

⁴See 7 U.S.C. § 608c(15)(B).