

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) I & G Docket No. 04-0001
)
Lion Raisins, Inc., a California)
corporation; Lion Raisin)
Company, a partnership or)
unincorporated association;)
Lion Packing Company,)
a partnership or unincorporated)
association; Alfred Lion, Jr., an)
individual; Daniel Lion, an)
individual; Jeffrey Lion, an)
individual; Bruce Lion, an)
individual; Larry Lion, an)
individual; and Isabel Lion, an)
individual,)
)
Respondents)

Ruling on Respondents' Petitions to Reopen Hearing

Introduction

The rules of practice applicable to the instant proceeding¹ provide that a party may file a petition to reopen a hearing to take further evidence, as follows:

¹The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) and the Rules of Practice Governing Withdrawal of Inspection and Grading Services (7 C.F.R. pt. 50) [hereinafter the Rules of Practice].

§ 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*—. . . .

. . . .

(2) *Petition to reopen hearing*. A petition to reopen a hearing to take further evidence may be filed at any time prior to the issuance of the decision of the Judicial Officer. Every such petition shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not merely cumulative, and shall set forth a good reason why such evidence was not adduced at the hearing.

7 C.F.R. § 1.146(a)(2). Respondents filed “Respondents’ Motion to Reopen Administrative Hearing Held Before ALJ Davenport” on April 5, 2007; “Respondents’ Second Supplemental Motion to Reopen Administrative Hearing Held before ALJ Davenport” on September 7, 2007; “Respondents’ Third Supplemental Motion to Reopen Administrative Hearing Held Before ALJ Davenport” on October 10, 2007; and “Respondents’ Supplemental Motion to Reopen Administrative Hearing Held Before ALJ Davenport” on October 15, 2007.

Lion Raisin Company, Lion Packing Company, Isabel Lion, and Larry Lion

On June 9, 2006, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Decision and Order in which he concluded that Respondents violated the Agricultural Marketing Act of 1946, as amended (7 U.S.C. §§ 1621-1632) [hereinafter the Agricultural Marketing Act] and the regulations governing the inspection and certification of processed fruits and vegetables (7 C.F.R. pt. 52) [hereinafter the Regulations] and debarred Respondents from receiving inspection services under the

Agricultural Marketing Act and the Regulations.² On June 15, 2006, the Hearing Clerk served Lion Raisin Company, Lion Packing Company, and Isabel Lion with the ALJ's Decision and Order,³ and on June 16, 2006, the Hearing Clerk served Larry Lion with the ALJ's Decision and Order.⁴ Lion Raisin Company, Lion Packing Company, Isabel Lion, and Larry Lion did not file an appeal petition within 30 days after service of the ALJ's Decision and Order, and, in accordance with the Rules of Practice, the ALJ's Decision and Order became final and effective as to Lion Raisin Company, Lion Packing Company, Isabel Lion, and Larry Lion 35 days after service of the ALJ's Decision and Order. (See 7 C.F.R. § 1.142(c)(4).)

The Rules of Practice provide that the administrative law judge shall rule on all motions made prior to the filing of the appeal of the administrative law judge's decision, except motions directly relating to the appeal, and the Judicial Officer shall rule on all motions made after the filing of an appeal. (See 7 C.F.R. § 1.143(a).) The petitions to reopen do not directly relate to an appeal. Therefore, as to Lion Raisin Company, Lion Packing Company, Isabel Lion, and Larry Lion, I lack jurisdiction to rule on the petitions to reopen.

²*In re Lion Raisins, Inc.*, 65 Agric. Dec. 193, 224, 232-33 (2006).

³United States Postal Service Domestic Return Receipt for article numbers 7004 1160 0004 4087 9979 and 7004 1160 0004 4087 9368.

⁴United States Postal Service Domestic Return Receipt for article number 7004 1160 0004 4087 9993.

Lion Raisins, Inc.; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion

Lion Raisins, Inc.; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion appealed the ALJ's June 9, 2006, Decision and Order and filed each of the petitions to reopen after they had filed their appeal. Therefore, as to Lion Raisins, Inc.; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion, I have jurisdiction to rule on the petitions to reopen.

Based upon my review of "Respondents' Motion to Reopen Administrative Hearing Held Before ALJ Davenport" filed April 5, 2007, I find Lion Raisins, Inc.; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion seek to adduce evidence that is cumulative or inadmissible. Lion Raisins, Inc.; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion had ample opportunity to obtain and present their evidence. The ALJ conducted an 8-day oral hearing. The Administrator presented his case in 3 days, calling two witnesses, who Respondents cross-examined, and introducing 74 exhibits that were admitted into evidence. Respondents presented their case during the remaining 5 days, calling 13 witnesses and introducing 22 exhibits that were admitted into evidence.

Lion Raisins, Inc.; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion identify two purposes for which they seek to reopen the hearing: (1) to establish Respondents' guarantees are "probably" reflected by the United States Department of Agriculture's [hereinafter USDA] re-inspection results and USDA withheld or destroyed

documents on which re-inspection results are recorded; and (2) to establish USDA's record-keeping system was untrustworthy (Respondents' Motion to Reopen Administrative Hearing Held Before ALJ Davenport at 67). Respondents attempted to establish that their documents accurately reflected USDA inspection results and that USDA's inspection procedure was untrustworthy during the hearing. I find no reason to reopen the hearing to allow further evidence for these purposes.

The Rules of Practice do not provide an automatic right to file more than one petition to reopen the hearing.⁵ Lion Raisins, Inc.; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion did not seek leave to file multiple petitions to reopen the hearing. Therefore, as to Lion Raisins, Inc.; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Bruce Lion, I deny "Respondents' Second Supplemental Motion to Reopen Administrative Hearing Held Before ALJ Davenport" filed September 7, 2007; "Respondents' Third

⁵*Cf. In re Heartland Kennels, Inc.* (Order Denying Second Pet. for Recons.), 61 Agric. Dec. 562 (2002) (holding, under the Rules of Practice, a party may not file more than one petition for reconsideration of a decision of the Judicial Officer); *In re Jerry Goetz* (Order Lifting Stay), 61 Agric. Dec. 282, 286 (2002) (holding the Rules of Practice do not provide for filing more than one petition for reconsideration of a decision of the Judicial Officer); *In re Fitchett Bros., Inc.* (Dismissal of Pet. for Recons.), 29 Agric. Dec. 2, 3 (1970) (dismissing a second petition for reconsideration on the basis that the Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From Marketing Orders do not provide for more than one petition for reconsideration of a final decision and order).

Supplemental Motion to Reopen Administrative Hearing Held Before ALJ Davenport”
filed October 10, 2007; and Respondents’ Supplemental Motion to Reopen
Administrative Hearing Held Before ALJ Davenport” filed October 15, 2007.

Done at Washington, DC

April 16, 2009

William G. Jenson
Judicial Officer