

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) 2002 AMA Docket No. F&V 989-1
)
Lion Raisins, Inc., a California)
corporation,)
)
Petitioner) **Second Remand Order**

PROCEDURAL HISTORY

Lion Raisins, Inc., a California corporation [hereinafter Petitioner], instituted this proceeding by filing a Petition¹ on August 5, 2002. Petitioner 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 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].

¹Petitioner entitles its Petition “Petition to Modify Raisin Marketing Order Provisions/Regulations and/or Petition to the Secretary of Agriculture to Set Aside Reserve Percentages of Other Seedless Raisins Pursuant to 7 C.F.R. § 989.1 *Et Seq.* and to Exempt Petitioner from Various Provisions of the Raisin Marketing Order and/or Any Obligations Imposed in Connection Therewith That Are Not in Accordance with Law” [hereinafter Petition].

The Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Respondent], filed a “Motion to Dismiss Petition,” and on May 14, 2003, Administrative Law Judge Jill S. Clifton dismissed the Petition.

On May 16, 2003, Petitioner filed an Amended Petition.² On August 1, 2003, Respondent filed a “Motion to Dismiss Amended Petition.” On November 3, 2003, Petitioner filed “Petitioner’s Opposition to Respondent’s Motion to Dismiss Amended Petition.” On November 6, 2003, Administrative Law Judge Leslie B. Holt [hereinafter the ALJ] issued an “Order” denying Respondent’s Motion to Dismiss Amended Petition.

On December 5, 2003, Respondent appealed to the Judicial Officer. On December 31, 2003, Petitioner filed “Petitioner’s Response to Respondent’s Second Appeal Petition.” On January 13, 2004, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

Based upon a careful consideration of the record, I agree with the ALJ’s November 6, 2003, Order denying Respondent’s Motion to Dismiss Amended Petition.

²Petitioner entitles its Amended Petition “Amended Petition to Modify Raisin Marketing Order Provisions/Regulations and/or Petition to the Secretary of Agriculture to Set Aside Reserve Percentages of Other Seedless Raisins Pursuant to 7 C.F.R. § 989.1 *Et Seq.* and to Exempt Petitioner from Various Provisions of the Raisin Marketing Order and/or Any Obligations Imposed in Connection Therewith That Are Not in Accordance with Law” [hereinafter Amended Petition].

APPLICABLE STATUTORY AND REGULATORY PROVISIONS

7 U.S.C.:

TITLE—7 AGRICULTURE

....

CHAPTER 26—AGRICULTURAL ADJUSTMENT

....

SUBCHAPTER III—COMMODITY BENEFITS

....

§ 608c. Orders regulating handling of commodity

....

**(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.

7 U.S.C. § 608c(15)(A).

7 C.F.R.:

TITLE 7—AGRICULTURE

....

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE

....

**CHAPTER IX—AGRICULTURAL MARKETING SERVICE
(MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS),
DEPARTMENT OF AGRICULTURE**

PART 900—GENERAL REGULATIONS

....

**SUBPART—RULES OF PRACTICE GOVERNING
PROCEEDINGS ON PETITIONS TO MODIFY
OR TO BE EXEMPTED FROM MARKETING ORDERS**

....

§ 900.52 Institution of proceeding.

(a) *Filing and service of petition.* Any handler desiring to complain that any marketing order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quadruplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the marketing order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the marketing order, or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the marketing order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Prayers for the specific relief which the petitioner desires the Secretary to grant;

(6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.

(c) *Motion to dismiss petition*—(1) *Filing, contents, and responses thereto*. If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the act or with the requirements of paragraph (b) of this section, or is not filed in good faith, or is filed for purposes of delay, the Administrator may, within thirty days after the service of the petition, file with the Hearing Clerk a motion to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds of objection to the petition and if based, in whole or in part, on an allegation of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the Hearing Clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the Judge for consideration.

(2) *Decision by the Judge*. The Judge, after due consideration, shall render a decision upon the motion stating the reasons for his action. Such decision shall be in the form of an order and shall be filed with the hearing clerk who shall cause a copy thereof to be served upon the petitioner and a

copy thereof to be transmitted to the Administrator. Any such order shall be final unless appealed pursuant to § 900.65: *Provided*, That within 20 days following the service upon the petitioner of a copy of the order of the Judge dismissing the petition, or any portion thereof, on the ground that it does not substantially comply in form and content with the act or with paragraph (b) of this section, the petitioner shall be permitted to file an amended petition.

7 C.F.R. § 900.52(a)-(c)(2).

CONCLUSIONS BY THE JUDICIAL OFFICER

Respondent raises three issues in “Respondent’s Second Appeal Petition.” First, Respondent contends the ALJ’s finding that the Amended Petition contains a full statement of the facts, including the manner in which Petitioner claims to be affected by the Raisin Order, is error (Respondent’s Second Appeal Pet. at 4-7).

Section 900.52(b)(3) of the Rules of Practice (7 C.F.R. § 900.52(b)(3)) provides that a petition must contain a full statement of facts upon which the petition is based, including the manner in which the petitioner claims to be affected by the provisions of the marketing order about which the petitioner complains. The ALJ, quoting paragraph 11 of the Amended Petition, concluded that the Amended Petition contains a full statement of facts upon which the Amended Petition is based, including the manner in which Petitioner claims to be affected by the provisions of the Raisin Order about which Petitioner complains (Order dated November 6, 2003, at 1). Based upon a careful review of the Amended Petition, I agree with the ALJ’s conclusion that the Amended Petition contains a full statement of facts upon which the Amended Petition is based, including the manner in which

Petitioner claims to be affected by the provisions of the Raisin Order about which Petitioner complains.

Second, Respondent contends the ALJ's finding that the Amended Petition contains the statement required by section 900.52(b)(4) of the Rules of Practice (7 C.F.R. § 900.52(b)(4)), is error (Respondent's Second Appeal Pet. at 8-9).

Section 900.52(b)(4) of the Rules of Practice (7 C.F.R. § 900.52(b)(4)) provides that a petition must contain a statement of the grounds on which the petitioner challenges the provisions of the marketing order about which the petitioner complains, as not in accordance with law. The ALJ, citing Petitioner's allegations in paragraph 14 of the Amended Petition, concluded that the Amended Petition contains a statement of the grounds on which Petitioner challenges the provisions of the Raisin Order about which Petitioner complains, as not in accordance with law (Order dated November 6, 2003, at 1). Based upon a careful review of the Amended Petition, I agree with the ALJ's conclusion that the Amended Petition contains a statement of the grounds on which Petitioner challenges the provisions of the Raisin Order about which Petitioner complains, as not in accordance with law.

Third, Respondent contends the ALJ erroneously concluded that section 900.52(b)(5) of the Rules of Practice (7 C.F.R. § 900.52(b)(5)) requires that a petition state grounds upon which relief can be granted and that the Amended Petition meets this requirement (Respondent's Second Appeal Pet. at 9).

Section 900.52(b)(5) of the Rules of Practice (7 C.F.R. § 900.52(b)(5)) provides that a petition must contain prayers for the specific relief which the petitioner desires the Secretary of Agriculture to grant. The ALJ erroneously concluded section 900.52(b)(5) of the Rules of Practice (7 C.F.R. § 900.52(b)(5)) requires that a petition state “grounds upon which relief can be granted” (Order dated November 6, 2003, at 2). I find the ALJ’s error harmless. Paragraph 18 of the Amended Petition sets forth prayers for the specific relief that Petitioner desires the Secretary of Agriculture to grant, as required by section 900.52(b)(5) of the Rules of Practice (7 C.F.R. § 900.52(b)(5)).

I conclude that the Amended Petition substantially complies in form and content with section 900.52(b) of the Rules of Practice (7 C.F.R. § 900.52(b)).

For the foregoing reasons, the following Order should be issued.

ORDER

1. The ALJ’s Order dated November 6, 2003, denying Respondent’s Motion to Dismiss Amended Petition is affirmed.

2. The proceeding is remanded to the ALJ to conduct proceedings in accordance with the Rules of Practice.

Done at Washington, DC

January 22, 2004

William G. Jenson
Judicial Officer