

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA Docket No. D-12-0423
)
Oasis Corporation, d/b/a)
One of a Kind Produce,)
) **Order Dismissing Purported**
) **Appeal Petition**
Respondent)

PROCEDURAL HISTORY

On October 26, 2012, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] issued a Decision and Order in which the Chief ALJ: (1) concluded Oasis Corporation willfully, flagrantly, and repeatedly violated the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a-499s) [hereinafter the PACA]; and (2) ordered publication of the facts and circumstances of Oasis Corporation’s violations of the PACA.¹

¹Chief ALJ’s Decision and Order at 7-8.

On November 5, 2012, the Hearing Clerk served Oasis Corporation with the Chief ALJ's Decision and Order.² On November 27, 2012, Oasis Corporation filed "Michelle Iovino's Notice of Appeal Re: Decision and Order Issued on October 26, 2012" [hereinafter Notice of Appeal], which states as follows:

TO THE CHIEF ADMINISTRATIVE JUDGE AND TO THE
COMPLAINANT ASSOCIATE DEPUTY ADMINISTRATOR, FRUIT AND
VEGETABLE PROGRAM AND AGRICULTURAL MARKETING
SERVICE:

Michelle Iovino, a former officer, director and shareholder Oasis Corporation dba One of a Kind Produce, the respondent in this proceeding ("Oasis" or the "Respondent") ("Iovino"), through her counsel, Gonzalez & Associates, A Professional Law Corporation, respectfully submits this notice of the "decision and order" issued on October 26, 2012, and served on October 31, 2012, with respect to the motion filed by the Associate Deputy Administrator, Fruit and Vegetable Program, and Agricultural Marketing Service (collectively, the "Claimant"), seeking a decision without hearing by reason of admissions (the "Motion for Decision") (the "October 2012 Decision"). A copy of the October 2012 Decision is attached hereto and is incorporated herein as Exhibit "1."

Dated: November 26, 2012. GONZALEZ & ASSOCIATES
A Professional Law Corporation

By: _____ /s/

ROSENDO GONZALEZ
Counsel for Counsel for Michelle

²United States Postal Service Domestic Return Receipt for article number 7005 1160 0002 7836 8835.

Iovino, Respondent's

Representative

By letter dated January 15, 2013, the Hearing Clerk, L. Eugene Whitfield, informed Oasis Corporation that the Chief ALJ's Decision and Order had not been appealed to the Secretary of Agriculture within the allotted time and, in accordance with the applicable rules of practice,³ the Chief ALJ's Decision and Order had become final and effective on December 10, 2012. On January 22, 2013, Oasis Corporation filed a response to the Hearing Clerk's January 15, 2013, letter, stating as follows:

Dear Mr. Whitfield:

I just received a notice from your office that the decision and order issued on October 26, 2012, were "not appealed" and became final on December 10, 2012.

That is not accurate.

On November 26, 2012, we filed and served the notice of appeal. I am enclosing a copy of that notice.

Hence, please provide an explanation why the decision would become final in spite of the timely submitted appeal.

If you have any questions or comments with respect to this matter, please do not hesitate to call me.

³The rules of practice applicable to this proceeding are the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

Very truly yours,
/s/
Rosendo Gonzalez

On January 24, 2013, the Hearing Clerk transmitted the record to the Office of the
Judicial Officer for consideration and decision.

DISCUSSION

The Rules of Practice set forth the requirements for an appeal petition, as follows:

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

7 C.F.R. § 1.145(a). Oasis Corporation's Notice of Appeal does not identify any purported error by the Chief ALJ, does not identify any portion of the Chief ALJ's Decision and Order or any ruling by the Chief ALJ with which Oasis Corporation disagrees, and does not allege any deprivation of rights. In short, Oasis Corporation's Notice of Appeal does not remotely conform to the requirements of 7 C.F.R. § 1.145(a). I have long dismissed filings which are purported to be appeal petitions but which do not remotely conform to the requirements of the Rules of Practice.⁴ Since no appeal has been filed which remotely conforms to the

⁴*In re Billy Mike Gentry* (Order Dismissing Purported Appeal), __ Agric. Dec. __

requirements of 7 C.F.R. § 1.145(a) and it is now too late to file an appeal, I conclude the Chief ALJ's October 26, 2012, Decision and Order became final and effective 35 days after November 5, 2012, when the Hearing Clerk served Oasis Corporation with the Chief ALJ's Decision and Order.

For the foregoing reasons, the following Order is issued.

ORDER

1. Oasis Corporation's purported appeal from the Chief ALJ's October 26, 2012, Decision and Order is dismissed.
2. The Chief ALJ's October 26, 2012, Decision and Order became final and effective December 10, 2012.

Done at Washington, DC

January 25, 2013

William G. Jenson
Judicial Officer

(Mar. 18, 2009); *In re Kermit Breed* (Order Dismissing Purported Appeal), 50 Agric. Dec. 675 (1991); *In re Bihari Lall* (Order Dismissing Purported Appeal), 49 Agric. Dec. 895 (1990).