

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	2004 AMA Docket No. F&V 966-1
)	
Procacci Brothers Sales)	
Corporation, Gargiulo, Inc.,)	
and Ag Mart, Inc., n/k/a)	
Santa Sweets, Inc.,)	
)	
Petitioners)	Order Denying Interim Relief

On January 6, 2004, Procacci Brothers Sales Corporation, Gargiulo, Inc., and Ag Mart, Inc., n/k/a Santa Sweets, Inc. [hereinafter Petitioners], instituted this proceeding by filing “Petition of Procacci Brothers Sales Corporation, Gargiulo, Inc. and Ag Mart, Inc.” [hereinafter Petition]. Petitioners instituted the proceeding under the Agricultural Marketing Agreement Act of 1937, as amended [hereinafter the AMAA]; the federal order regulating the handling of tomatoes grown in Florida (7 C.F.R. pt. 966) [hereinafter the Florida Tomato 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]. Petitioners seek an order granting a permanent exemption for heirloom variety tomatoes from the grade requirements of the Florida Tomato Order (Pet. ¶ 34).

On January 6, 2004, Petitioners also filed an application for interim relief in which Petitioners seek an immediate, interim order granting a certificate of privilege exempting UglyRipe™ tomatoes from the grade requirements of the Florida Tomato Order (Application for Interim Relief at 7). On January 23, 2004, the Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Respondent], filed “Opposition to Application for Interim Relief.” On February 5, 2004, Petitioners filed “Petitioners’ Response to the Opposition to the Applications for Interim Relief.” On February 27, 2004, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Petitioners’ application for interim relief.

Petitioners’ application for interim relief is denied based upon established precedent. The Judicial Officer has consistently denied applications for interim relief from marketing orders because interim relief would work directly in opposition to the purposes of the marketing order from which interim relief is sought and the act under which the marketing order is issued, and could harm the public interest if provisions of the marketing order were, in effect, suddenly terminated by granting interim relief to the applicant and others who plan to file similar applications for interim relief.¹

¹*In re Cal–Almond*, 55 Agric. Dec. 1027 (1996); *In re Cal–Almond, Inc.*, 53 Agric. Dec. 527 (1994); *In re Dole DF&N, Inc.*, 53 Agric. Dec. 527 (1994); *In re Gerawan Farming, Inc.*, 52 Agric. Dec. 925 (1993); *In re Independent Handlers*, 51 Agric. Dec. 122 (1992); *In re Cal–Almond, Inc.*, 50 Agric. Dec. 670 (1991); *In re Saulsbury Orchards & Almond Processing, Inc.*, 49 Agric. Dec. 836 (1990); *In re Lansing Dairy, Inc.*, 48 Agric. Dec. 867 (1989); *In re Gerawan Co.*, 48 Agric. Dec. 79 (1989); *In re Cal–Almond, Inc.*, 48 Agric. Dec. 15 (1989); *In re Wileman Bros. & Elliott, Inc.*, 47 Agric.

(continued...)

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

ORDER

Petitioners' application for interim relief filed January 6, 2004, is denied.

Done at Washington, DC

March 2, 2004

William G. Jenson
Judicial Officer

¹(...continued)

Dec. 1109 (1988), *reconsideration denied*, 47 Agric. Dec. 1263 (1988); *In re Wileman Bros. & Elliott, Inc.*, 46 Agric. Dec. 765 (1987), *reconsideration denied*, 46 Agric. Dec. 765 (1987); *In re Saulsbury Orchards & Almond Processing, Inc.*, 46 Agric. Dec. 561 (1987); *In re Borden, Inc.*, 44 Agric. Dec. 661 (1985); *In re Sequoia Orange Co.*, 43 Agric. Dec. 1719 (1984); *In re Dean Foods Co.*, 42 Agric. Dec. 1048 (1983).