

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-09-0189
)	
Anthony J. Spinale and)	
Mr. Sprout, Inc.,)	
)	
Respondents)	
)	and
In re:)	PACA-APP Docket No. 10-0138
)	
Vincent Mineo,)	
)	Order Dismissing
Petitioner)	Interlocutory Appeal

On April 8, 2014, Administrative Law Judge Janice K. Bullard [hereinafter the ALJ] issued an Order Setting Time and Situs for Hearing, in which the ALJ scheduled a hearing in this proceeding to commence September 3, 2014, in New York City, New York. On May 15, 2014, Anthony J. Spinale and Mr. Sprout, Inc., filed a request to postpone the hearing until such time as Mr. Spinale’s medical condition improves and Mr. Spinale’s doctor permits him to attend the hearing. On June 5, 2014, the Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, United States Department of Agriculture, filed Complainant’s Opposition to Respondents’ Request for Postponement.

On June 10, 2014, the ALJ issued an Order Denying Request for Continuance of Hearing stating the hearing shall commence as scheduled in the Order Setting Time and Situs for Hearing.

On July 10, 2014, Mr. Spinale and Mr. Sprout, Inc., filed an Appeal Petition requesting that the Judicial Officer overturn the ALJ’s Order Denying Request for Continuance of Hearing. On

July 30, 2014, Mr. Spinale and Mr. Sprout, Inc., requested expedited consideration of their Appeal Petition. On July 30, 2014, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

The rules of practice applicable to this proceeding¹ provide only for appeal of an administrative law judge's decision to the Judicial Officer and limit the time during which a party may file an appeal to a 30-day period after receiving service of an administrative law judge's written decision and to a 30-day period after issuance of an administrative law judge's oral decision, 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.

7 C.F.R. § 1.145(a). The Rules of Practice define the word "decision," as follows:

1.132 Definitions.

As used in this subpart, the terms as defined in the statute under which the proceeding is conducted and in the regulations, standards, instructions, or orders issued thereunder, shall apply with equal force and effect. In addition and except as may be provided otherwise in this subpart:

....

Decision means: (1) The Judge's initial decision made in accordance with the provisions of 5 U.S.C. 556 and 557, and includes the Judge's (i) findings and conclusions and the reasons or basis therefor on all material issues of fact, law or discretion, (ii) order, and (iii) rulings on proposed findings, conclusions and

¹The 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].

orders submitted by the parties; and

(2) The decision and order by the Judicial Officer upon appeal of the Judge's decision.

7 C.F.R. § 1.132.

The ALJ's Order Denying Request for Continuance of Hearing is not a "decision" as that word is defined in the Rules of Practice. Moreover, the ALJ has not issued an initial decision in the instant proceeding in accordance with 5 U.S.C. §§ 556 and 557, and the Rules of Practice do not permit interlocutory appeals.² Therefore, the ALJ's June 10, 2014, Order Denying Request for Continuance of Hearing cannot be appealed to the Judicial Officer, and Mr. Spinale and Mr. Sprout, Inc.'s July 10, 2014, Appeal Petition must be rejected as premature.

For the foregoing reasons, the following Order is issued.

ORDER

Mr. Spinale and Mr. Sprout, Inc.'s interlocutory appeal filed July 10, 2014, is dismissed.

Done at Washington, DC

August 5, 2014

William G. Jenson
Judicial Officer

²*In re Lion Raisins, Inc.* (Order Dismissing Appeal as to Al Lion, Jr., Dan Lion, and Jeff Lion), 63 Agric. Dec. 830, 834 (2004); *In re Velasam Veal Connection* (Order Dismissing Appeal), 55 Agric. Dec. 300, 304 (1996); *In re L.P. Feuerstein* (Order Dismissing Appeal), 48 Agric. Dec. 896 (1989); *In re Landmark Beef Processors, Inc.* (Order Dismissing Appeal), 43 Agric. Dec. 1541 (1984); *In re Orié S. Lea Vell* (Order Dismissing Appeal by Respondent Spencer Livestock, Inc.), 40 Agric. Dec. 783 (1980).