

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PACA-D Docket No. 14-0098
)
Paradise Corner, LLC,)
)
Respondent) **Remand Order**

PROCEDURAL HISTORY

Administrative Law Judge Jill S. Clifton [ALJ] issued *Paradise Corner, LLC*, PACA-D Docket No. 14-0098, 2016 WL 5718453 (U.S.D.A. Aug. 19, 2016) (Decision and Order on the Written Record). On September 19, 2016, Paradise Corner, LLC [Paradise Corner], filed a letter addressed to the ALJ captioned “An Appeal to Docket 14-0098.” Attached to the letter are copies of twenty bills of lading and a copy of a letter dated April 19, 2016, from Andrew Y. C. Lee to Cheung Chau Trading, Inc. The Associate Deputy Administrator, Fruit and Vegetable Program, Agricultural Marketing Service, United States Department of Agriculture [Deputy Administrator], failed to respond to Paradise Corner’s September 19, 2016, filing, and on October 17, 2016, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture, transmitted the record to the Office of the Judicial Officer for consideration of Paradise Corner’s September 19, 2016, filing.

DISCUSSION

The rules of practice applicable to this proceeding¹ set forth 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). Paradise Corner's September 19, 2016, filing does not identify any error by the ALJ; does not identify any portion of the ALJ's August 19, 2016, Decision and Order on the Written Record or any ruling by the ALJ with which Paradise Corner disagrees; and does not allege any deprivation of rights. In short, Paradise Corner's September 19, 2016, filing does not remotely conform to the requirements for an appeal petition set forth in 7 C.F.R. § 1.145(a). Therefore, despite the caption of Paradise Corner's September 19, 2016, filing ("An Appeal to Docket 14-0098"), I find the filing is not an appeal petition.

Instead, while not without doubt, I find Paradise Corner's September 19, 2016, filing is a petition for reopening the hearing to take further evidence. In particular, I find the September 19,

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) [Rules of Practice].

2016, filing is a petition for reopening the hearing to admit as evidence the documents attached to Paradise Corner's September 19, 2016, letter to the ALJ.

The Rules of Practice provide that any petition for reopening the hearing filed prior to the filing of an appeal of the administrative law judge's decision shall be ruled on by the administrative law judge.² Neither Paradise Corner nor the Deputy Administrator has appealed *Paradise Corner, LLC*, PACA-D Docket No. 14-0098, 2016 WL 5718453 (U.S.D.A. Aug. 19, 2016) (Decision and Order on the Written Record), to the Judicial Officer. Therefore, I remand this proceeding to the ALJ to rule on Paradise Corner's September 19, 2016, filing, which I find to be a petition for reopening the hearing.

For the foregoing reasons, the following Order is issued.

ORDER

This proceeding is remanded to the ALJ for a ruling on Paradise Corner's September 19, 2016, petition for reopening the hearing and for any further proceedings the ALJ finds necessary for the proper disposition of this proceeding.

Done at Washington, DC

October 21, 2016

William G. Jenson
Judicial Officer

²See 7 C.F.R. § 1.146(a)(1).