

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	I & G Docket No. 03-0001
	)	
Bruce Lion, an individual;	)	
Alfred Lion, Jr., an individual;	)	
Daniel Lion, an individual;	)	
Jeffrey Lion, an individual;	)	
Larry Lion, an individual;	)	
Isabel Lion, an individual;	)	
Lion Raisins, Inc., a California	)	
corporation; Lion Raisin	)	
Company, a partnership or	)	
unincorporated association; and	)	
Lion Packing Company, a	)	
partnership or unincorporated	)	
association,	)	
	)	
Respondents	)	<b>Ruling Dismissing Motion To Dismiss and For Summary Judgment</b>

**PROCEDURAL HISTORY**

Kenneth C. Clayton, Associate Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on October 11, 2002. Complainant instituted the proceeding under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. §§ 1621-1632 (1994)) [hereinafter the Agricultural Marketing Act]; the regulations and standards governing the inspection and certification of processed

fruits and vegetables (7 C.F.R. pt. 52) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) and the Rules of Practice Governing Withdrawal of Inspection and Grading Services (7 C.F.R. pt. 50) [hereinafter the Rules of Practice]. Complainant alleged that on August 26, 1997, Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Lion Raisins, Inc.; Lion Raisin Company; and Lion Packing Company violated the Agricultural Marketing Act and the Regulations. Complainant requested debarment of Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Lion Raisins, Inc.; Lion Raisin Company; and Lion Packing Company from inspection and grading services under the Agricultural Marketing Act in accordance with section 52.54(a) of the Regulations (7 C.F.R. § 52.54(a)).<sup>1</sup>

On December 20, 2002, Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Lion Raisins, Inc.; Lion Raisin Company; and Lion Packing Company filed a motion to dismiss the Complaint on the ground that the Complaint alleged violations that occurred beyond the 5-year statute of limitations set forth in 28 U.S.C. § 2462.<sup>2</sup> On February 7, 2003, Complainant filed “Complainant’s Response To Respondents’ Motion To Dismiss Complaint” arguing that, under section 1.143(b)(1) of the Rules of Practice (7 C.F.R. §

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<sup>1</sup>Compl. ¶¶ 8-11.

<sup>2</sup>Respondents’ Motion To Dismiss at 1.

1.143(b)(1)), the December 20, 2002, motion to dismiss the Complaint cannot be entertained.

On October 28, 2003, Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Lion Raisins, Inc.; Lion Raisin Company; and Lion Packing Company filed a motion to dismiss the Complaint on the ground that the Agricultural Marketing Act does not authorize the Secretary of Agriculture to demand debarment.<sup>3</sup> On November 13, 2003, Complainant filed “Complainant’s Response To ‘Respondent’s [sic] Motion To Dismiss”” arguing that, under section 1.143(b)(1) of the Rules of Practice (7 C.F.R. § 1.143(b)(1)), the October 28, 2003, motion to dismiss the Complaint cannot be entertained.

On July 12, 2005, Complainant filed an Amended Complaint alleging that on August 26, 1997, Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; Lion Raisins, Inc.; Lion Raisin Company; and Lion Packing Company [hereinafter Respondents] violated the Agricultural Marketing Act and the Regulations. Complainant requests debarment of Respondents from inspection and grading services under the Agricultural Marketing Act in accordance with section 52.54(a) of the Regulations (7 C.F.R. § 52.54(a)).<sup>4</sup> On August 10, 2005, Bruce Lion; Alfred Lion, Jr.;

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<sup>3</sup>Respondent’s [sic] Motion To Dismiss at 1, 5-14.

<sup>4</sup>Amended Compl. ¶¶ 11-14.

Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc., filed “Respondents’ Answer to the USDA’s Amended Complaint.”<sup>5</sup>

On December 9, 2005, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued a Memorandum Opinion and Order [hereinafter Initial Decision] granting the December 20, 2002, motion to dismiss the Complaint<sup>6</sup> on the ground that the Complaint alleged violations that occurred beyond the 5-year statute of limitations set forth in 28 U.S.C. § 2462.<sup>7</sup> On January 27, 2006, Complainant filed an appeal petition seeking an order vacating the ALJ’s Initial Decision. On March 20, 2006, Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc., filed “Respondents’ Reply To Complainant’s Appeal Petition.” On April 6, 2006, Complainant filed “Complainant’s Motion to Strike or Not to Consider ‘Respondents’ Reply to Complainant’s Appeal Petition,’” and on April 26, 2006, Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc., filed

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<sup>5</sup>Lion Raisin Company and Lion Packing Company did not file an answer to the Amended Complaint; however, Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc., assert Lion Raisin Company and Lion Packing Company have no formal existence (Respondents’ Answer to the USDA’s Amended Complaint ¶¶ 2-3).

<sup>6</sup>The ALJ states the proceeding was before him for resolution of “pending Motions” (Initial Decision at 1). Based on the record before me, I infer the ALJ’s reference to “pending Motions” is to the December 20, 2002, and October 28, 2003, motions to dismiss the Complaint. While the ALJ granted the December 20, 2002, motion to dismiss the Complaint, I cannot determine the ALJ’s disposition of the October 28, 2003, motion to dismiss the Complaint.

<sup>7</sup>Initial Decision at 4-5.

“Respondents’ Reply to ‘Complainant’s Motion to Strike or Not to Consider  
‘Respondents’ Reply to Complainant’s Appeal Petition.’”

On May 11, 2006, Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc., filed “Respondents’ Motion To Dismiss for Lack of Subject Matter Jurisdiction and for Summary Judgment Limiting Scope of Relief and for Failure to Afford Pre-litigation Warning and Opportunity to Demonstrate or Achieve Compliance” [hereinafter Motion To Dismiss and For Summary Judgment] and a request for oral argument. On May 31, 2006, Complainant filed “Complainant’s Response To Third Motion To Dismiss.” On June 5, 2006, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and a ruling on Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc.’s May 11, 2006, Motion To Dismiss and For Summary Judgment.

### **CONCLUSIONS BY THE JUDICIAL OFFICER**

#### **Respondents Who Filed the Motion To Dismiss and For Summary Judgment**

Complainant asserts the Motion To Dismiss and For Summary Judgment suggests that all nine Respondents filed the Motion To Dismiss and For Summary Judgment and contends only seven of the nine Respondents filed the Motion To Dismiss and For Summary Judgment.<sup>8</sup>

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<sup>8</sup>Complainant’s Response To Third Motion To Dismiss at 3-4.

I agree with Complainant. Wesley T. Green and James A. Moody signed the Motion To Dismiss and For Summary Judgment.<sup>9</sup> The record reveals that Wesley T. Green is the attorney of record for seven of the nine Respondents, Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc.,<sup>10</sup> and James A. Moody is the attorney of record for five of the nine Respondents, Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; and Lion Raisins, Inc.<sup>11</sup> Lion Raisin Company and Lion Packing Company have been pro se in the instant proceeding since December 29, 2005,<sup>12</sup> and neither Lion Raisin Company nor Lion Packing Company is a signatory to the Motion To Dismiss and For Summary Judgment.

### **The Request For Oral Argument**

Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc., request oral argument.<sup>13</sup> Section 1.145(d) of the Rules of Practice provides the time within which a party may request opportunity for oral argument before the Judicial Officer, as follows:

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<sup>9</sup>Motion To Dismiss and For Summary Judgment at 39-40.

<sup>10</sup>Respondents' Answer to the USDA's Amended Complaint at 14.

<sup>11</sup>Notice of Entry of Appearance filed December 1, 2005.

<sup>12</sup>Respondents' Notice of Withdrawal of Mr. Pashayan as Attorney of Record; and Notice of Designation of Mr. Pashayan as Legal Counsel for Settlement Discussions filed January 24, 2006.

<sup>13</sup>Motion To Dismiss and For Summary Judgment at 39.

**§ 1.145 Appeal to Judicial Officer.**

. . . .

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

7 C.F.R. § 1.145(d).

On December 9, 2005, the ALJ issued an Initial Decision. On January 27, 2006, Complainant filed an appeal petition seeking an order vacating the ALJ's Initial Decision. On February 9, 2006, the Hearing Clerk served Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc., with Complainant's appeal petition.<sup>14</sup> Section 1.145(b) of the Rules of Practice (7 C.F.R. § 1.145(b)) provides that any response to an appeal petition must be filed with the Hearing Clerk within 20 days after service of the appeal petition; therefore, Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc.'s response to Complainant's appeal petition was due no later than March 1, 2006. Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc., requested that I extend to March 17, 2006, the time for filing a response to Complainant's appeal

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<sup>14</sup>United States Postal Service Domestic Return Receipt for Article Number 7003 1010 0003 0642 0304.

petition.<sup>15</sup> On March 2, 2006, I granted Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc.'s request.<sup>16</sup> Thus, Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc.'s time for filing a response to Complainant's appeal petition and requesting oral argument before the Judicial Officer expired March 17, 2006, and Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc.'s May 11, 2006, request for oral argument comes far too late to be considered.

#### **The Motion To Dismiss and For Summary Judgment**

Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc.'s May 11, 2006, Motion To Dismiss and For Summary Judgment cannot be entertained. Section 1.143(b)(1) of the Rules of Practice (7 C.F.R. § 1.143(b)(1)) provides that any motion will be entertained other than a motion to dismiss on the pleading. The Rules of Practice do not define the term "motion to dismiss on the pleading." Respondents' Motion To Dismiss and For Summary Judgment clearly seeks dismissal of this proceeding and the basis for Respondents' motion is the purported failure of Complainant to allege facts in its pleading which give the Secretary of

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<sup>15</sup>Respondents' Motion Request for Extension of Time to File Reply to Appeal Petition filed March 1, 2006.

<sup>16</sup>Informal Order Extending Time for Filing Respondents' Response to Complainant's Appeal Petition filed March 2, 2006.

Agriculture jurisdiction to withdraw inspection and grading services under the Agricultural Marketing Act.

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

**RULING**

Bruce Lion; Alfred Lion, Jr.; Daniel Lion; Jeffrey Lion; Larry Lion; Isabel Lion; and Lion Raisins, Inc.'s May 11, 2006, Motion To Dismiss and For Summary Judgment is dismissed.

Done at Washington, DC

December 5, 2006

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William G. Jenson  
Judicial Officer