

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	NDPRB Docket No. 05-0001
)	
Gallo Cattle Company,)	
a California limited partnership,)	
)	
Petitioner)	Order Denying Interim Relief

On April 20, 2005, Gallo Cattle Company [hereinafter Petitioner] filed a petition¹ pursuant to section 118(a) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. § 4509(a)), requesting an exemption from, or modification of, the Dairy Promotion and Research Order (7 C.F.R. §§ 1150.101-.187). Petitioner also requests interim relief, as follows:

3. Petitioner is also entitled to interim relief, injunctive relief allowing Petitioner to escrow assessments in an interest type bearing account pending the decision of the case on the merits so that Petitioner’s assessments are not used by the [National Dairy Promotion and Research] Board to convey the speech complained of herein, so that there is available

¹Petitioner entitles its petition “Petition Pursuant To 7 U.S.C. § 4509 Contending That The National Dairy Promotion Program (7 U.S.C. § 4501 et seq.), Legislation, The Rules And Regulations Promulgated Thereunder, And The Assessments Imposed For The Same Violates Petitioner’s Rights Guaranteed Under The First Amendment Of The United States Constitution, And Seeking A Modification Of The Order, An Exemption From The Order, And A Refund Of Assessments (7 C.F.R. § 1150.131 Et Seq. And 7 C.F.R. § 900.50; Request For Interim Relief And An Escrowing Of Assessments” [hereinafter Petition].

source of money to refund when Petitioner prevails, and for the government to comply with the U.S. Supreme Court decision of *Chicago Teachers Union v. Hudson*[.]

Pet. at 9.

On May 17, 2005, the Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Respondent], filed Answer of Respondent. On May 18, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for consideration of Petitioner's request for interim relief.

Petitioner's request for interim relief is denied for the following three reasons. First, interim relief is not available to Petitioner. The rules of practice governing this proceeding (7 C.F.R. §§ 900.52(c)(2)-.71, 1200.50-.52) [hereinafter the Rules of Practice] provide that a person who has filed a petition pursuant to 7 C.F.R. § 900.52 may, by separate application filed with the Hearing Clerk, apply to the Secretary of Agriculture for interim relief, pending final determination of the proceeding.² However, Petitioner filed the Petition pursuant to 7 C.F.R. § 1200.52, not 7 C.F.R. § 900.52; therefore, interim relief is not available to Petitioner.

Second, even if interim relief were available in this proceeding, Petitioner has not filed a separate application for interim relief, as required by the Rules of Practice.³

²7 C.F.R. § 900.70(a).

³7 C.F.R. § 900.70(a).

Instead, Petitioner's request for interim relief is included in its Petition for exemption from, or modification of, the Dairy Promotion and Research Order.

Third, even if interim relief were available to Petitioner and Petitioner had filed a separate application for interim relief, Petitioner's request for interim relief would be denied based upon established precedent. The Judicial Officer consistently denies 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.⁴ The reasons for denial of applications for interim relief from marketing orders are applicable to Petitioner's application for interim relief from the Dairy

⁴*In re Dole DF&N, Inc.*, 53 Agric. Dec. 527 (1994); *In re Cal-Almond, 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. 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); *In re Moser Farm Dairy, Inc.*, 40 Agric. Dec. 1246 (1981).

Promotion and Research Order issued pursuant to the Dairy Production Stabilization Act of 1983.⁵

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

ORDER

Petitioner's application for interim relief is denied.

Done at Washington, DC

May 20, 2005

William G. Jenson
Judicial Officer

⁵*In re Gallo Cattle Co.*, 55 Agric. Dec. 340 (1996). *See generally In re Handlers Against Promoflor*, 55 Agric. Dec. 1042, 1044 (1996) (stating the reasons for denial of interim relief from marketing orders are applicable to petitioner's application for interim relief from the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order issued pursuant to the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993).