

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AMA Docket No. M 10-0283
)
GH Dairy, a partnership,)
)
Petitioner) **Order Denying Petition to Reconsider**

PROCEDURAL HISTORY

On May 8, 2012, GH Dairy filed a petition requesting that I reconsider *In re GH Dairy*, __ Agric. Dec. __ (Apr. 24, 2012) [hereinafter Petition to Reconsider]. On June 13, 2012, the Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Administrator], filed a response to GH Dairy's Petition to Reconsider. On June 15, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration of, and a ruling on, GH Dairy's Petition to Reconsider.

RULING ON PETITION TO RECONSIDER

GH Dairy's Request for Oral Argument

GH Dairy's request for oral argument before the Judicial Officer on the issues raised in the Petition to Reconsider¹ is denied because the issues have been thoroughly briefed by GH Dairy, the Administrator, the International Dairy Foods Association, and the National Milk Producers Federation.

Discussion

On November 4, 2011, GH Dairy filed an "Appeal to the Judicial Officer and Request for Oral Argument" in which GH Dairy raised 12 issues. In its Petition to Reconsider, GH Dairy requests that I reconsider and reverse my findings and conclusions regarding seven of the 12 issues addressed in *In re GH Dairy*, ___ Agric. Dec. ___ (Apr. 24, 2012).² Specifically, GH Dairy requests that I reconsider and reverse the following: (1) the conclusion that the Secretary of Agriculture is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. §§ 601-674) [hereinafter the AMAA], to regulate producer-handlers who do not purchase milk; (2) the finding that the Agricultural Marketing Service's response to a public comment, published at 64 Fed. Reg. 16,026, 16135 (Apr. 2, 1999), is wrong; (3) the conclusion that the Milk Regulatory Equity Act of 2005 supports the Secretary of Agriculture's authority

¹Petition to Reconsider at 9 ¶ III.

²GH Dairy does not waive any objections to other findings and conclusions in *In re GH Dairy*, ___ Agric. Dec. ___ (Apr. 24, 2012) (Pet. to Reconsider at 9 ¶ IV).

to regulate producer-handlers; (4) the finding that the final rule published at 75 Fed. Reg. 21,157 (Apr. 23, 2010) [hereinafter the Final Rule] is supported by substantial evidence; (5) the conclusion that the Final Rule does not violate the AMAA's prohibition on trade barriers in 7 U.S.C. § 608c(5)(G); (6) the finding of no merit in GH Dairy's claim that the Final Rule violates the requirement of uniform minimum prices among handlers in 7 U.S.C. § 608c(5)(C); and (7) the finding that dairy farm size is a reasonable method by which to distinguish small producer-handlers from large producer-handlers.

GH Dairy raises the same arguments that I considered and rejected in *In re GH Dairy*, __ Agric. Dec. ____ (Apr. 24, 2012). Nonetheless, I have carefully reviewed *In re GH Dairy* __ Agric. Dec. ____ (Apr. 24, 2012), in light of GH Dairy's Petition to Reconsider. I find no error regarding the seven issues raised in GH Dairy's Petition to Reconsider, and I find no purpose would be served by my reiterating the discussion of these seven issues that appears in *In re GH Dairy*, __ Agric. Dec. ____ (Apr. 24, 2012).

A petition to reconsider is only granted, absent highly unusual circumstances, if the Judicial Officer has committed error or if there is an intervening change in controlling law.³ Based upon my review of the record, in light of the issues raised in GH Dairy's Petition to Reconsider, I find no error of law or fact necessitating modification of *In re GH Dairy*, __ Agric. Dec. ____ (Apr. 24, 2012). Moreover, GH Dairy does not assert an

³*In re Jack L. Rader*, __ Agric. Dec. ____, slip op. at 1-2 (Jan. 30, 2012); *In re Sam Mazzola* (Order Denying Pet. for Recons. and Ruling Denying Mot. for Oral Argument), 69 Agric. Dec. 536, 537 (2010).

intervening change in controlling law, and I find no highly unusual circumstances necessitating modification of *In re GH Dairy*, __ Agric. Dec. ____ (Apr. 24, 2012).

For the foregoing reasons and the reasons set forth in *In re GH Dairy*, __ Agric. Dec. ____ (Apr. 24, 2012), the following Order is issued.

ORDER

GH Dairy's Petition to Reconsider, filed May 8, 2012, is denied. This Order shall become effective upon service on GH Dairy.

Done at Washington, DC

June 21, 2012

William G. Jenson
Judicial Officer