

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) 2005 AMA Docket No. F&V 989-1  
)  
Lion Raisins, Inc., a California )  
corporation, )  
) **Ruling Striking Petitioner’s**  
) **Second Amended Petition**  
Petitioner )

**PROCEDURAL HISTORY**

**Petitioner’s Petition and Petitioner’s Amended Petition**

Lion Raisins, Inc. [hereinafter Petitioner], instituted this proceeding by filing a petition<sup>1</sup> on November 10, 2004. Petitioner instituted the proceeding under the Agricultural Marketing Agreement Act of 1937, as amended; the federal marketing order regulating the handling of raisins produced from grapes grown in California (7 C.F.R. pt. 989); and the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders (7 C.F.R. §§ 900.50-.71). On December 29, 2004,

---

<sup>1</sup>Petitioner entitles its petition “Petition to Enforce and/or Modify Raisin Marketing Order Provisions/Regulations and/or Petition to the Secretary of Agriculture to Eliminate as Mandatory the Use of USDA Processed Products Inspection Branch Services for All Incoming and Outgoing Raisins, as Currently Required by 7 C.F.R. §§ 989.58 & 989.59, to Exempt Petitioners [sic] from the Mandatory Inspection Services by USDA for Incoming and Outgoing Raisins and/or Any Obligations Imposed in Connection Therewith That Are Not in Accordance with Law” [hereinafter Petition].

the Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Respondent], filed a motion to dismiss Petitioner's Petition.

On February 9, 2005, Petitioner filed an amended petition.<sup>2</sup> On February 14, 2005, Respondent filed a motion to strike Petitioner's Amended Petition. On March 3, 2005, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued an Order: (1) granting Respondent's motion to strike Petitioner's Amended Petition; (2) granting Respondent's motion to dismiss Petitioner's Petition; and (3) stating Petitioner may file an amended petition within 20 days after service of the Order (ALJ's March 3, 2005, Order at 3).

On March 11, 2005, Respondent appealed the ALJ's March 3, 2005, Order to the Judicial Officer. On March 30, 2005, Petitioner filed a response opposing Respondent's appeal petition, and on April 25, 2005, I issued a Decision and Order dismissing Petitioner's November 10, 2004, Petition and striking, as premature, Petitioner's February 9, 2005, Amended Petition.<sup>3</sup> On May 13, 2005, Petitioner filed a complaint in

---

<sup>2</sup>Petitioner entitles its amended petition "Amended Petition to Enforce and/or Modify Raisin Marketing Order Provisions/Regulations; To Exempt Petitioner from the Mandatory Inspection Services by USDA for Incoming and Outgoing Raisins, To Preclude the Raisin Administrative Committee and/or USDA from Receiving the Otherwise Required Raisin Administrative Committee Forms; Petition to Allow Buyers and Producers to Call for Inspection Services, and to Delete Certain Obligations Imposed in Connection Therewith That Are Not in Accordance with Law" [hereinafter Amended Petition].

<sup>3</sup>*In re Lion Raisins, Inc.*, 64 Agric. Dec. \_\_\_\_, slip op. at 22 (Apr. 25, 2005).

the United States District Court for the Eastern District of California seeking judicial review of *In re Lion Raisins, Inc.*, 64 Agric. Dec. \_\_\_\_ (Apr. 25, 2005).<sup>4</sup>

### **Petitioner's Second Amended Petition**

On March 24, 2005, Petitioner filed a second amended petition.<sup>5</sup> On March 30, 2005, Respondent filed a motion to strike Petitioner's Second Amended Petition, and on April 22, 2005, Petitioner filed a response opposing Respondent's motion to strike Petitioner's Second Amended Petition. On May 3, 2005, the ALJ issued an initial decision and order denying Respondent's motion to strike Petitioner's Second Amended Petition and dismissing Petitioner's Second Amended Petition for failure to state a legally cognizable claim.

On June 3, 2005, Petitioner appealed the ALJ's May 3, 2005, initial decision and order to the Judicial Officer. On June 27, 2005, Respondent filed a response to Petitioner's appeal petition in which Respondent requests that I strike Petitioner's Second

---

<sup>4</sup>*Lion Raisins, Inc. v. United States Dep't of Agric.*, No. CIV-F-05-00640-AWI-SMS (E.D. Cal. May 13, 2005).

<sup>5</sup>Petitioner entitles its second amended petition "Amended Petition to Enforce and/or Modify Raisin Marketing Order Provisions/Regulations; To Exempt Petitioner from the Mandatory Inspection Services by USDA for Incoming and Outgoing Raisins, To Preclude the Raisin Administrative Committee and/or USDA from Receiving the Otherwise Required Raisin Administrative Committee Forms; Petition to Allow Buyers and Producers to Call for Inspection Services, and to Delete Certain Obligations Imposed in Connection Therewith That Are Not in Accordance with Law" [hereinafter Second Amended Petition].

Amended Petition. On July 1, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

**APPLICABLE STATUTORY PROVISION**

7 U.S.C.:

**TITLE—7 AGRICULTURE**

.....

**CHAPTER 26—AGRICULTURAL ADJUSTMENT**

.....

**SUBCHAPTER III—COMMODITY BENEFITS**

.....

**§ 608c. Orders regulating handling of commodity**

.....

**(15) Petition by handler for modification of order or exemption;  
court review of ruling of Secretary**

(A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States in any district in which such handler is an inhabitant, or has his principal place of business, are vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court

determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 608a(6) of this title. Any proceedings brought pursuant to section 608a(6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

7 U.S.C. § 608c(15).

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

The April 25, 2005, Decision and Order, dismissing Petitioner's November 10, 2004, Petition, is the final agency decision in this proceeding. Proceedings for judicial review of the April 25, 2005, Decision and Order are not concluded. Petitioner's filing Petitioner's Second Amended Petition has resulted in the Secretary of Agriculture and the United States District Court for the Eastern District of California simultaneously reviewing this proceeding.

Therefore, I do not adopt the ALJ's May 3, 2005, initial decision and order, dismissing Petitioner's March 24, 2005, Second Amended Petition, as the final Decision and Order in this proceeding. Instead, I conclude, in order to avoid wasting judicial and agency resources and in order to avoid a confusing and muddled record, Petitioner's Second Amended Petition should be struck.

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

**ORDER**

Petitioner's Second Amended Petition, filed March 24, 2005, is stricken.

This Order shall become effective on the day after service on Petitioner.

Done at Washington, DC

July 13, 2005

---

William G. Jenson  
Judicial Officer