

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) I & G Docket No. 01-0001
)
Lion Raisins, Inc., a California)
corporation formerly known as)
Lion Enterprises, Inc., and as)
Lion Raisins; Lion Raisin)
Company, a partnership or)
unincorporated association; Lion)
Packing Company, a partnership)
or unincorporated association;)
Al Lion, Jr., an individual;)
Dan Lion, an individual;)
Jeff Lion, an individual; and)
Bruce Lion, an individual,)
)
Respondents)
)
and)

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) **Order Severing Cases and Remanding**
I & G Docket No. 03-0001

On May 4, 2009, Administrative Law Judge Jill S. Clifton [hereinafter ALJ Clifton] issued a Decision and Order in which she consolidated *In re Lion Raisins, Inc.*, I & G Docket No. 01-0001, and *In re Bruce Lion*, I & G Docket No. 03-0001 (May 4, 2009, Decision and Order at 6 ¶ 10). ALJ Clifton states she commenced the hearing in *In re Bruce Lion*, I & G Docket No. 03-0001, on June 9, 2008, but never concluded the hearing (May 4, 2009, Decision and Order at 5 ¶ 9).

The parties in *In re Lion Raisins, Inc.*, I & G Docket No. 01-0001, and *In re Bruce Lion*, I & G Docket No. 03-0001, agree with ALJ Clifton that the proceeding in *In re Bruce Lion*, I & G Docket No. 03-0001, was truncated. The Associate Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Administrator], states “[a] hearing in [*In re Bruce Lion*, I & G Docket No. 03-0001,] was held before Administrative Law [Judge] Jill S. Clifton on June 9 and 10, 2008, but Judge Clifton adjourned the hearing before the complainant’s presentation of evidence was concluded, pending the resolution of certified questions to the Judicial Officer, and the hearing was never concluded.” (Memorandum of Points and Authorities at 2-3 (footnote omitted).)¹ Respondents in *In re Lion Raisins, Inc.*, I & G Docket No. 01-0001, and *In re Bruce Lion*, I & G Docket No. 03-0001, state “[t]he Judge should not have consolidated the ‘01’ and ‘03’ cases without giving Lion an opportunity

¹Currently, there are no certified questions relating to *In re Lion Raisins, Inc.*, I & G Docket No. 01-0001, or *In re Bruce Lion*, I & G Docket No. 03-0001, pending before the Judicial Officer.

to defend itself against the allegations in the ‘03’” and further state “[t]he Judge’s Decision with respect to the I&G 03-01 case is inadequate as a matter of law because Lion was never afforded the rights under the APA^[2] . . . and Rules of Practice^[3] . . . to present its defense, introduce evidence on its behalf, and cross-examine witnesses.”

(Respondents’ Appeal Pet. from the Decision of the Judge on May 4, 2009 at ¶¶ 13, 49.)

I agree with ALJ Clifton, the Administrator, and Respondents that the proceeding before ALJ Clifton in *In re Bruce Lion*, I & G Docket No. 03-0001, has not been concluded. Therefore, I sever *In re Lion Raisins, Inc.*, I & G Docket No. 01-0001, from *In re Bruce Lion*, I & G Docket No. 03-0001, and remand *In re Bruce Lion*, I & G Docket No. 03-0001, to Acting Chief Administrative Law Judge Peter M. Davenport [hereinafter the Acting Chief ALJ] for assignment of *In re Bruce Lion*, I & G Docket No. 03-0001, to an administrative law judge to conduct *In re Bruce Lion*, I & G Docket No. 03-0001, in accordance with the Administrative Procedure Act and the Rules of Practice.

Under the vast majority of circumstances, I would remand *In re Bruce Lion*, I & G Docket No. 03-0001, to the administrative law judge who initially conducted the

²Respondents’ reference to the “APA” is an abbreviation for the Administrative Procedure Act.

³Respondents’ reference to the “Rules of Practice” is to the rules of practice applicable to *In re Lion Raisins, Inc.*, I & G Docket No. 01-0001, and *In re Bruce Lion*, I & G Docket No. 03-0001, those being 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].

proceeding. However, ALJ Clifton states “[m]ore proceedings will not provide insight into Lion’s business operations or AMS’s inspection and grading operations and will not alter my views on the outcome of these proceedings.” (May 4, 2009, Decision and Order at 6 ¶ 11.) Therefore, the Acting Chief ALJ may wish to assign *In re Bruce Lion*, I & G Docket No. 03-0001, to an administrative law judge other than ALJ Clifton to avoid any argument that *In re Bruce Lion*, I & G Docket No. 03-0001, has been prejudged.

For the foregoing reasons, the following Order is issued.

ORDER

1. *In re Lion Raisins, Inc.*, I & G Docket No. 01-0001, and *In re Bruce Lion*, I & G Docket No. 03-0001, are severed.
2. *In re Bruce Lion*, I & G Docket No. 03-0001, is remanded to the Acting Chief ALJ for assignment of the proceeding to an administrative law judge to conduct a proceeding in accordance with the Administrative Procedure Act and the Rules of Practice.

3. All motions pending before me in *In re Bruce Lion*, I & G Docket
No. 03-0001, are moot.

Done at Washington, DC

January 19, 2010

William G. Jenson
Judicial Officer