

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) HPA Docket No. 02-0004
)
Patti Magee and Michael Magee,)
) **Ruling Dismissing Complainant’s**
Respondents) **Motion to Abrogate Consent Decision**

PROCEDURAL HISTORY

On November 24, 2004, Administrative Law Judge William B. Moran [hereinafter the ALJ] entered a Consent Decision agreed to by Patti Magee and Michael Magee [hereinafter Respondents] and the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant]. On February 25, 2005, Complainant requested that the Judicial Officer abrogate the Consent Decision based upon Respondents’ purported failure to comply with the terms of the Consent Decision.¹ On March 14, 2005, Respondents filed a response to Complainant’s Motion To Judicial Officer To Abrogate Consent Decision denying there is a basis for abrogating the Consent Decision.² On March 17, 2005, Complainant filed a response to

¹“Complainant’s Motion To Judicial Officer To Abrogate Consent Decision.”

²“Respondents’ Response to Complainant’s Motion To Judicial Officer To Abrogate Consent Decision.”

Respondents' response to Complainant's Motion To Judicial Officer To Abrogate Consent Decision.³ On March 18, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Complainant's Motion To Judicial Officer To Abrogate Consent Decision.

CONCLUSION BY THE JUDICIAL OFFICER

Section 1.143(a) of the rules of practice applicable to this proceeding⁴ provides that motions filed or made prior to the filing of an appeal of an administrative law judge's decision, except motions which directly relate to an appeal, shall be ruled on by the administrative law judge, as follows:

§ 1.143 Motions and requests.

(a) *General.* All motions and requests shall be filed with the Hearing Clerk, and served upon all the parties, except (1) requests for extensions of time pursuant to § 1.147, (2) requests for subpoenas pursuant to § 1.149, and (3) motions and requests made on the record during the oral hearing. *The Judge shall rule upon all motions and requests filed or made prior to the filing of an appeal of the Judge's decision pursuant to § 1.145, except motions directly relating to the appeal.* Thereafter, the Judicial Officer will rule on any motions and requests, as well as the motions directly relating to the appeal.

7 C.F.R. § 1.143(a) (emphasis added).

³“Complainant's Response to Respondents Response To Complainant's Motion To Judicial Officer To Abrogate Consent Decision.”

⁴Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151).

No appeal from the ALJ's Consent Decision has been filed in this proceeding. Moreover, Complainant's Motion To Judicial Officer To Abrogate Consent Decision does not relate to an appeal from the ALJ's Consent Decision. Therefore, the Judicial Officer cannot entertain Complainant's Motion To Judicial Officer To Abrogate Consent Decision and Complainant's Motion To Judicial Officer To Abrogate Consent Decision must be dismissed.⁵

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

RULING

Complainant's Motion To Judicial Officer To Abrogate Consent Decision, filed February 25, 2005, is dismissed.

Done at Washington, DC

March 22, 2005

William G. Jenson
Judicial Officer

⁵See *In re Lion Raisins, Inc.*, 63 Agric. Dec. ___, slip op. at 2-3 (July 12, 2004).