

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) 2005 AMA Docket No. F&V 989-2
)
Lion Raisins, Inc., a California)
Corporation)
)
Petitioner) **Order Dismissing Petition With Prejudice**

Lion Raisins, Inc. (“Lion”) instituted this proceeding by filing a petition on March 1, 2005, pursuant to § 608c (15)(A) of the Agricultural Marketing Agreement Act, as amended (7 U.S.C. §§ 601-627; § 608c (15)(A); the “AMAA”). The petition purportedly challenges obligations imposed upon Lion under the marketing order issued pursuant to the AMAA, that regulates the handling of “Raisins Produced From Grapes Grown in California” (7 C.F.R. Part 989; “Raisin Order” or “Order”).

On March 11, 2005, Respondent, the Administrator of the Agricultural Marketing Service, filed a Motion to Dismiss Petition. On April 4, 2005, Petitioner filed an Opposition to Respondent’s Motion to Dismiss. This proceeding was thereupon assigned to me.

Upon consideration of the Petition and the arguments of the parties as set forth in the Motion to Dismiss and the Opposition thereto, I have decided that the Petition should be dismissed with prejudice.

Lion seeks to add language to an implementing regulation (7 C.F. R. § 989.159(d)), issued pursuant to section 989.59(d) of the Raisin Order (7 C.F.R. § 989.59(d)), to require the Processed Products Standardization and Inspection Branch of USDA (“Inspection Service”) to transmit original inspection certificates to Lion’s customers upon request. Lion also seeks a

ruling allowing it to issue certificates of analysis to its customers that contain test results from multiple sources, including the Inspection Service, which the Inspection Service may not then construe to be improperly created facsimiles of USDA certificates.

Lion premises its requests upon the fact that, since 1990, it has been preparing certificates of analysis for its raisin customers that contain various test results from Lion, USDA, and/or independent testing laboratories. Lion does this to satisfy customer requests and because it believes information on the USDA certificates prepared by the Inspection Service is inaccurate. This practice has led to charges by the Inspection Service accusing Lion of altering or forging USDA certificates and issuing “facsimile” certificates misrepresenting USDA test results to its customers.

As Respondent points out, 7 C.F.R. § 989.59(d), the provision Lion specifies as supporting its right to file a petition under the AMAA, says nothing about a handler obtaining original certificates of inspection or how the inspection agency may choose to transmit them. 7 C.F.R. § 989.59 (d) states:

(d) Inspection and certification. Unless otherwise provided in this section, each handler shall, at his own expense, before shipping or otherwise making final disposition of raisins, cause an inspection to be made of such raisins to determine whether they meet the then applicable minimum grade and condition standards for natural condition raisins or the then applicable minimum grade standards for packed raisins. Such handler shall obtain a certificate that such raisins meet the aforementioned applicable minimum standards and shall submit or cause to be submitted to the committee a copy of such certificate together with such other documents or records as the committee may require. The certificate shall be issued by the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency will improve the administration of this amended subpart. Any certificate issued pursuant to this paragraph shall be valid only for such period of time as the committee may specify, with the approval of the Secretary, in appropriate rules and regulations.

The full extent of Lion's obligation under the Raisin Order is to have the raisins it handles inspected by the Inspection Service and send the Raisin Order's administrative committee, copies of the certificates obtained from the Inspection Service. Apparently, Lion also uses the inspection certificates as a marketing tool. It is this additional use for the certificates as well as its preparation and use of other certificates of analysis that have caused it to be in conflict with the Inspection Service.

The regulation that the Inspection Service has applied to charge Lion with fraud or misrepresentation in its use of inspection certificates and "facsimiles" (7 C.F.R. § 52.54(a)(1)(2005)), was promulgated pursuant to section 203 (h) of the Agricultural Marketing Act of 1946 (7 U.S.C. § 1622 (h); "the 46 Act"). Modifications and exemptions from that regulation cannot be sought or obtained in a proceeding brought pursuant to § 608(c)(15)(A) of the AMAA. Likewise, the refusal of the Inspection Service to send original certificates of inspection directly to Lion's customers, is not based upon powers conferred upon the Inspection Service by the AMAA, but by the 46 Act . The two statutes are different, and the provisions of the AMAA for challenging marketing orders and obligations under marketing orders do not extend to other USDA regulatory programs.

We recently stated that a proceeding under § 8(c)(15)(A) of the AMAA may not be used as a forum to debate questions of policy, desirability, or effectiveness of a marketing order's provisions. In re: Lion Raisin, et al., 63 Agric. Dec. 1, WL2619833 (2004). So too, a section 8(c)(15)(A) AMAA proceeding cannot be used to challenge the policy, desirability, or effectiveness of regulations and practices that are based upon a completely different statute.

Accordingly, the Petition is Dismissed with Prejudice.

DATED: May 3, 2005

VICTOR W. PALMER
Administrative Law Judge

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