UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

I & G Docket No. 03-0001

In re: LION RAISINS, INC., a California corporation,
formerly known as LION ENTERPRISES, INC.;
LION RAISIN COMPANY, a partnership or unincorporated association;
LION PACKING COMPANY, a partnership or unincorporated association;
ALFRED LION, JR., an individual;
BRUCE LION, an individual;
DANIEL LION, an individual;
ISABEL LION, an individual; and
JEFFREY LION, an individual; and
LARRY LION, an individual

MEMORANDUM OPINION AND ORDER

This action is before the Administrative Law Judge for resolution of pending Motions. The procedural history of the case is quite extensive with consideration on two occasions by the Judicial Officer[1] following two separate rulings by Judge Jill S. Clifton denying Complainant's Motion for Adoption of a Default Decision. The Judicial Officer faulted Judge Clifton's findings on both occasions and on his second consideration of the case entered a Default Decision against the Respondents debarring them for a period of a year from receiving inspection services under the Agricultural Marketing Act.[2] The Respondents sought review by the United States District Court for the Eastern District of California.[3] By decision entered on May 12, 2005, United States District Judge Robert E. Coyle found the Judicial Office had abused his discretion in entering the

[1] *In re Lion Raisins, Inc.*, 63 Agric. Dec. 271 (2004); *In re Lion Raisins, Inc.*, 63 Agric. Dec. 211 (2004).
[2] *In re Lion Raisins, Inc.*, 63 Agric. Dec. 211 (2004).
[3] *Lion Raisins, Inc v. United States Department of Agriculture*, No. CV-F-04-5844 REC DLB (E.D. Cal. May 12, 2005).

default judgment against the Respondents and remanded the case to the Judicial Officer for further proceedings.[4] By Remand Order dated June 30, 2005, the case was further remanded by the Judicial Officer to Judge Clifton. An Amended Complaint was filed on July 12, 2005 which has been answered by the Respondents. On October 6, 2005, the case was reassigned to me.

The Complaint filed on October 11, 2002 and the Amended Complaint filed on July 12, 2005 both seek debarment of the Respondents from inspection and grading services for violations of the Agricultural Marketing Act of 1946, (7 U.S.C. §§ 1621-1632 (1994)) [hereinafter the "Act"] alleged to have occurred on or about August 26, 1997.

The Respondents contend that the complaint is barred because 28 U.S.C. § 2462 requires that a proceeding for a civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless brought within five years of the date the violation occurred. In this instance, although the violations are alleged to have occurred on or about August 26, 1997, the complaint was not filed until October 11, 2002, which is beyond the five year period. A telephonic hearing was held on December 2, 2005 in this and another action brought involving the Respondents on pending matters, including the issue of whether the Complaint in this action is time barred. During the hearing, government counsel was asked whether the evidence that would be introduced would involve conduct on any date other than August 26, 1997. As her response was in the negative, disposition of the limitation issue is appropriate at this time.

The applicability of the statute of limitations under 28 U.S.C. § 2462 to similar actions by the Secretary was previously considered by then Chief Judge James W. Hunt in *In re George A. Bargery*, 61 Agric. Dec. 772 (2002). There, the Complaint sought to disqualify the Respondent

[4] Judge Coyle *sua sponte* granted USDA summary judgment on Lion's assignment of error concerning lack of subject matter jurisdiction, indicating that the statute of limitations is an affirmative defense which is irrelevant to a court's subject matter jurisdiction. As affirmative defenses relate to the merits of a case, the JO did not lack jurisdiction on that basis. (Opinion at page 12)

from purchasing catastrophic risk protection for one year and from receiving any other benefit under the Federal Crop Insurance Act (FCIA) for a period of five years. Concluding that the effects of the sanction sought in the complaint in that case was punitive, Judge Hunt found that the matter was a proceeding for the enforcement of a civil penalty which was barred by 28 U.S.C. § 2462.[5]

In the instant case, the Complainant has sought to distinguish this action from that in *Bargery* asserting that (1) *Bargery* was not an action under the Agricultural Marketing Act (the Act); (2*) Bargery* was an initial ALJ decision that was not appealed to the Judicial Officer and thus is not entitled to great weight as precedent; (3) *Bargery* was based upon the erroneous premise that the Department's purpose in seeking sanctions in its enforcement of federal statutes is to punish violators in order to deter them from future violations and that the "severe sanction policy" has not been the policy of the Department for over a decade.

28 U.S.C. § 2462 provides in pertinent part:

> [A]n action, suit, or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued....

Complainant is correct that the underlying statute in *Bargery* was not an action under the Act, but rather was one brought under the Federal Crop Insurance Act ("FCIA"), 7 U.S.C. § 1506. The sanction sought in that case was disqualification from purchasing catastrophic risk insurance for a period of one year and participation in any other benefit under FCIA for a period of five years.[6] In the instant case, the Complainant seeks to disqualify the Respondents from being provided the inspection services which are considered necessary in order to do business in

[5] *Id.* at 774.
[6] The effect of the sanction sought in the instant case might be considered more severe than that in *Bargery* as the forfeiture of eligibility to participate in FCIA programs while requiring greater assumption of risk or coverage at a higher cost might not necessary put an individual out of business.

the markets in which this Respondent currently competes in the raisin industry. As the sanctions in both cases involve disqualification from receiving services, the fact that *Bargery* was brought under a different statute is not material.

Complainant is also correct that *Bargery* is an initial ALJ decision which was not appealed to the Judicial Officer; however, as the Secretary did not seek review, it remains the decision of the Secretary and is entitled to consideration as precedent.

Complainant's third argument that the earlier decision was based upon an erroneous premise and that the "severe sanction policy" implicit in *Bargery* has been abandoned for over a decade ignores the mandate of 28 U.S.C. § 2462 which requires actions for the enforcement of a forfeiture, pecuniary or otherwise, to be commenced within five years of the date the claim first accrues.[7] Complainant argues that contrary to Judge Hunt's conclusion that the sanction was punitive, i.e. a penalty, the sanction sought in this action is remedial in nature and hence is beyond the reach of the limitation statute.[8] Even if I were to agree that the sanction sought is not a "penalty" or "punitive" as Judge Hunt found, the sanction sought does operate as a forfeiture (not pecuniary in this case, but nonetheless otherwise) of services otherwise provided to entities in the raisin business. The clear and longstanding policy of Congress that enforcement actions be brought in a timely manner effectively limits the reach of governmental agencies and requires them to be diligent in bringing such actions.

Accordingly, I conclude that the action is barred by the operation of 28 U.S.C. § 2462 and the complaint should be dismissed.

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[7] A statute of limitations was enacted by the Fifth Congress which provided a three year statute of limitations on civil actions to enforce penalties in 1799. Acts Mar. 2, 1799, ch. 22, § 89, 1 Stat.695 The three years was extended to the current five years in a provision relating to violations of revenue laws enacted in 1804. Mar. 26, 1804, ch. 40, § 3, 2 Stat. 290. Other revisions have been made over the years in 1818, 1839, 1863, and 1868. The current language of 28 U.S.C. § 2462 was enacted in 1948. June 25, 1948, c. 646, 62 Stat. 974.

[8] The words "penalty or forfeiture" in the former § 791 were defined as something imposed for infraction of a public law. *Meeker v. Lehigh Valley R. Co.*, 236 U.S. 412, 35 S. Ct. 328, 59 L.Ed. 644 (1915).

ORDER

This action being commenced more than five years after the date when the claim first accrued, it is barred by 28 U.S.C. § 2462. Accordingly, the Complaint is **DISMISSED**.

Copies of this Order will be served upon the parties by the Hearing Clerk.

Done at Washington, D.C.
December 9, 2005

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PETER M. DAVENPORT
Administrative Law Judge

Copies to: Collene Carroll, Esquire
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