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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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| In re: | ) | |
| | ) | |
| Quinter Livestock Market, LLC; and | ) | PS-D Docket No. 19-J-0081 |
| Clint Kvasnicka, | ) | PS-D Docket No. 19-J-0082 |
| | ) | |
| Respondents. | ) | |

**ORDER TO STRIKE AND DISMISS RESPONDENTS' FURTHER ATTEMPT TO APPEAL WITH PREJUDICE**

Appearances:

*Buren W. Kidd, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Ave SW, Washington, DC 20250, for the Complainant (AMS);*[1] *and*

*Clint Kvasnicka, pro se, for Respondent Quinter Livestock Market, LLC and himself.*

**Order issued by John Walk, Judicial Officer.**

**Summary of Procedural History**

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181 *et seq*.) (Act); the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. §§ 201.1 *et seq*.) (Regulations); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 through 1.151) (Rules of Practice). The proceeding progressed through all the usual administrative steps, from the initial Complaint, through the Initial Decision and Order (IDO) issued by Administrative Law Judge Jill Clifton on April 8, 2020.

[1] The Complainant is the Deputy Administrator, Fair Trade Practices Program, Agricultural Marketing Service, United States Department of Agriculture (AMS or Complainant).

Respondents initially appealed to the Judicial Officer by way of an informal email on May 19, 2020. The former Judicial Officer, Judge Bobbie J. McCartney (Judicial Officer McCartney), construed the email as a Petition for Appeal. On August 27, 2020, Judicial Officer McCartney affirmed Judge Clifton's IDO with a proviso that in the event Respondents could demonstrate to AMS within sixty (60) days of the date of entry of the Order that they have made payment in full as to all transactions referenced in said Order and that they have operated their business in a manner compliant with the specific requirements of the Act since November 2018, AMS may waive, in whole or in part, the suspension of Respondents' registration ordered by Judge Clifton's IDO. Such showing was not made within the time frame allowed. Judicial Officer McCartney's Decision and Order on appeal was served upon Respondents on August 31, 2020.

Thereafter, Respondents again communicated by email dated September 15, 2020 their dissatisfaction with Judicial Officer McCartney's Decision and Order, and this email was construed liberally as a Petition for Reconsideration. After careful consideration, the Petition for Reconsideration was denied. In Judicial Officer McCartney's September 30, 2020 Order denying Respondents' Petition for Reconsideration, Respondents were informed that they had the right to seek judicial review of Judicial Officer McCartney's ruling within 60 days after its entry by filing a petition to review the Order in the court of appeals wherein venue lies.[2] At that point, this case was closed at the administrative level, with all administrative remedies

[2] 28 U.S.C. § 2344.

exhausted. However, on November 30, 2020, Respondents sent an electronic message to the hearing clerk which I construe as a second appeal.

## DISCUSSION

The Rules of Practice provide certain administrative remedies to a Petitioner that disagrees with the decision of an Administrative Law Judge.[3] As set forth in the Rules of Practice:

> . . . a party who disagrees with the decision . . . may appeal the decision to the Judicial Officer by filing **an** appeal petition with the Hearing Clerk.

7 C.F.R. § 1.145(a) (emphasis added).

The Rules of Practice allow the filing of only a single appeal to the Judicial Officer. *See Octagon Sequence of Eight, Inc.*, 66 Agric. Dec. 1093, 1100 (U.S.D.A. 2007), *aff'd*, 322 F. App'x. 814 (11th Cir. 2009) (not to be cited as precedent under 11th Circuit Rule 36-2). If a party is dissatisfied with the Judicial Officer's decision on appeal, the Rules of Practice authorize the filing of a petition to reconsider the Judicial Officer's decision or to rehear or reargue the proceeding provided that any such petition is filed "within 10 days after the date of service of such decision upon the party filing the petition." (7 C.F.R. § 1.146(a)(3)).

Respondents appealed Judge Clifton's IDO to Judicial Officer McCartney on May 19, 2020. The August 27, 2020 Decision and Order of Judicial Officer McCartney affirming Judge Clifton's IDO with a proviso was served upon Respondents on August 31, 2020. The Rules of

[3] 7 C.F.R. §§ 1.145 and 1.146.

Practice provide no allowance for Respondents to make any further appeal to the Judicial Officer.[4]

Moreover, Respondents' Petition for Reconsideration was denied on September 30, 2020. The Rules of Practice provide no allowance for Respondents to make any further petition for reconsideration as any such petition must be filed within 10 days after service of the Judicial Officer's decision on appeal. (7 C.F.R. § 1.146(a)(3)). Respondents have exhausted all their available administrative remedies. I have no jurisdiction to hear Respondents' instant attempt to further appeal. Any further appeals, as noted in the Decision and Order, would have to have been properly brought before the United States Court of Appeals within the specified time frame. This case is closed at the administrative level.

## ORDER

For the reasons discussed herein, Respondents' instant appeal is **dismissed** with prejudice and **stricken** from the record. This Order does not serve to extend any appeals deadlines.

[4] Also, the instant attempt to further appeal was filed after the time for filing an appeal expired. *See* 7 C.F.R. § 1.145(a).

Copies of this Order shall be served by the Hearing Clerk upon each party. The Hearing Clerk will use both certified mail and regular mail for Respondents, and as a courtesy, also email copies to Complainant and Respondent Clint Kvasnicka at the email address he used to reach the Hearing Clerk.

Done at Washington, D.C.,

this _14th__ day of January 2021

JOHN WALK

Digitally signed by JOHN WALK
Date: 2021.01.14 12:07:10 -05'00'

John Walk
Judicial Officer

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