

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) 2005 AMA Docket No. M-4-3  
)  
Country Classic Dairies, Inc., )  
) **Order Granting Motion**  
Petitioner ) **to Withdraw Appeal**

Country Classic Dairies, Inc., instituted this proceeding by filing a “Petition Contesting Interpretation and Application of Certain Federal Milk Order Regulations and of Obligations Assessed to Petitioner Thereunder” [hereinafter the Petition] on August 22, 2005. Country Classic Dairies, Inc., instituted the proceeding under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. §§ 601-674) [hereinafter the AMAA]; the General Provisions of Federal Milk Marketing Orders (7 C.F.R. pt. 1000); and the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders (7 C.F.R. §§ 900.50-.71).

Country Classic Dairies, Inc., seeks: (1) a declaration that the Market Administrator’s construction and application of 7 C.F.R. § 1000.76(c) is not in accordance with law; (2) a refund of all monies paid by Country Classic Dairies, Inc., pursuant to the Market Administrator’s interpretation and application of Montana law to

7 C.F.R. § 1000.76(c); and (3) an award of all attorney fees, costs, and expenses incurred by Country Classic Dairies, Inc., in connection with the instant proceeding (Pet. ¶ 24).

On October 11, 2005, Lloyd Day, Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Administrator], filed “Answer of Defendant”: (1) denying the material allegations of the Petition; (2) asserting Country Classic Dairies, Inc., failed to state a claim upon which relief can be granted; and (3) asserting the Market Administrator’s interpretation of 7 C.F.R. § 1000.76(c) is in accordance with law and binding upon Country Classic Dairies, Inc.

On July 12, 2006, Chief Administrative Law Judge Marc R. Hillson [hereinafter the Chief ALJ] conducted a hearing in Bozeman, Montana. John H. Vetne, Raymond, New Hampshire, represented Country Classic Dairies, Inc. Sharlene A. Deskins, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Administrator. The Utah Dairymen’s Association, represented by Charles M. English, Jr., Thelen Reid & Priest, LLP, Washington, DC, participated in the proceeding as an amicus, pursuant to 7 C.F.R. § 900.57. On March 30, 2007, after the parties and amicus filed post-hearing briefs, the Chief ALJ issued a Decision:

(1) concluding the Market Administrator’s application of 7 C.F.R. § 1000.76(c) to Country Classic Dairies, Inc., is in accordance with the law; and (2) dismissing Country Classic Dairies, Inc.’s Petition (Decision at 12-13).

On May 2, 2007, Country Classic Dairies, Inc., appealed the Chief ALJ's Decision to the Judicial Officer. On September 12, 2007, Country Classic Dairies, Inc., filed a Motion to Withdraw Appeal. On September 18, 2007, the Administrator filed a response to the Motion to Withdraw Appeal stating he supports the motion. On September 19, 2007, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for a ruling on Country Classic Dairies, Inc.'s Motion to Withdraw Appeal Petition.

A party's motion to withdraw its own appeal petition is generally granted; however, withdrawal of an appeal petition is not a matter of right. In considering whether to grant a motion to withdraw an appeal petition, the Judicial Officer must consider the public interest.<sup>1</sup> Based on the record before me, I find no basis for denying Country Classic Dairies, Inc.'s Motion to Withdraw Appeal Petition.

For the foregoing reasons, the following Order is issued.

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<sup>1</sup>See *Ford Motor Co. v. NLRB*, 305 U.S. 364, 370 (1939) (stating, where the NLRB petitions for enforcement of its order against an employer and jurisdiction of the court has attached, permission to withdraw the petition rests in the sound discretion of the court to be exercised in light of the particular circumstances of the case); *American Automobile Mfrs. Ass'n v. Commissioner, Mass. Dep't of Env'tl. Prot.*, 31 F.3d 18, 22 (1st Cir. 1994) (stating the court of appeals has broad discretion to grant or deny voluntary motions to dismiss appeal); *In re Hartford Packing Co.*, 60 Agric. Dec. 851, 853 (2001) (stating withdrawal of an appeal petition is not a matter of right); *In re Smith Waller*, 34 Agric. Dec. 373, 374 (1975) (stating the rules of practice do not permit a party to withdraw an appeal as a matter of right; in considering whether to grant a motion to withdraw an appeal, the Judicial Officer must consider the public interest).

**ORDER**

1. Country Classic Dairies, Inc.'s Motion to Withdraw Appeal Petition is granted.
2. The Chief ALJ's Decision, filed March 30, 2007, is the final decision in this proceeding. The Order issued by the Chief ALJ in the Decision filed March 30, 2007, shall become effective on the date of service of this Order on Country Classic Dairies, Inc.
3. Because this Order terminates this proceeding, the Administrator's June 22, 2007, Motion to Reconsider the Order Granting Petitioner's Request to Remove E-mail is dismissed as moot.

Done at Washington, DC

September 21, 2007

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William G. Jenson  
Judicial Officer