

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) I & G Docket No. 01-0001
)
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; Al)
Lion, Jr., an individual; Dan)
Lion, an individual; Jeff Lion,)
an individual; and Bruce Lion,)
an individual,)
)
Respondents) **Ruling on Certified Questions**

On February 20, 2004, Administrative Law Judge Jill S. Clifton [the ALJ] certified two questions to the Judicial Officer. Each of the ALJ's questions is followed by "subparts."

Debarment Authority Under the Agricultural Marketing Act of 1946

First, the ALJ asks whether the Secretary of Agriculture has authority to debar persons from benefits under the Agricultural Marketing Act of 1946, as amended

(7 U.S.C. §§ 1621-1631) [hereinafter the Agricultural Marketing Act of 1946], as follows:

Question:

Does the Secretary of Agriculture have the authority under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. §§ 1621-1631), to impose debarment of a person from any or all of the benefits of said Act for a specified period, pursuant to 7 C.F.R. § 52.54?

Subparts:

(1) Does it make a difference if Respondents failed to assert in Respondents' Answer to the Second Amended Complaint filed July 29, 2002, that the Secretary lacks such authority?

(2) Does it make a difference that the criminal penalties pursuant to 7 U.S.C. § 1622 can be imposed upon only knowing participants in the wrongdoing, while the sanction pursuant to 7 C.F.R. § 52.54 can be imposed upon any person who commits or causes the wrongful act(s) or practice(s) **including any agents, officers, subsidiaries, or affiliates of such person?**

(3) Does it make a difference whether the purpose of 7 C.F.R. § 52.54 is (a) remedial or (b) punitive or penal? Which is it?

(4) Does it make a difference if a Respondent is a handler **required** to obtain inspection and certification in order to market the bulk of the produce it handles, under a different statute, the Agricultural Marketing Act of 1937, as amended (7 U.S.C. §§ 601-674) and Marketing Order 989 (7 C.F.R. part 989)?

(5) Does it make a difference if the Secretary of Agriculture has no authority to issue subpoenas or subpoenas duces tecum, when timely requested by Complainant or Respondents and deemed appropriate by the administrative

law judge, for use in a debarment action pursuant to 7 C.F.R.
§ 52.54?

Certification to Judicial Officer at 1-2 (emphasis in original).

Answer:

The Agricultural Marketing Act of 1946 authorizes the Secretary of Agriculture to issue regulations and orders, as follows:

§ 1622. Duties of Secretary relating to agricultural products

The Secretary of Agriculture is directed and authorized:

.....

(h) Inspection and certification of products in interstate commerce; credit and future availability of funds; investment; certificates as evidence; penalties

To inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe[.]

§ 1624. Cooperation with Government and State agencies, private research organizations, etc.; rules and regulations

.....

(b) The Secretary of Agriculture shall promulgate such orders, rules, and regulations as he deems necessary to carry out the provisions of this chapter.

7 U.S.C. §§ 1622(h), 1624(b).

The Secretary of Agriculture's authority to prescribe regulations for the inspection, certification, and identification of the class, quality, quantity, and condition of agricultural products and to issue regulations and orders to carry out the purposes of the

Agricultural Marketing Act of 1946 includes authority to issue debarment regulations and to debar persons from benefits under the Agricultural Marketing Act of 1946.¹ Moreover, the Secretary of Agriculture has long exercised debarment authority under the Agricultural Marketing Act of 1946.² I do not find the Secretary of Agriculture's

¹*American Raisin Packers, Inc. v. United States Dep't of Agric.*, 66 Fed. Appx. 706, 2003 WL 21259771 (9th Cir. 2003) (stating section 203(h) of the Agricultural Marketing Act of 1946 (7 U.S.C. § 1622(h)) provides ample authority for the promulgation of 7 C.F.R. § 52.54 (a debarment regulation); and affirming the Judicial Officer's debarment of American Raisin Packers, Inc., from receiving inspection services under the Agricultural Marketing Act of 1946) (not to be cited except pursuant to Ninth Circuit Rule 36-3); *West v. Bergland*, 611 F.2d 710 (8th Cir. 1979) (stating regulations which permit the Secretary of Agriculture to withdraw meat grading services under the Agricultural Marketing Act of 1946 are authorized by the Agricultural Marketing Act of 1946; and affirming the district court's denial of a request to enjoin the Secretary of Agriculture from holding an administrative hearing to determine whether meat grading and acceptance services under the Agricultural Marketing Act of 1946 should be withdrawn), *cert. denied*, 449 U.S. 821 (1980).

²*See In re American Raisin Packers, Inc.*, 60 Agric. Dec. 165 (2001) (debaring the respondent from receiving inspection services under the Agricultural Marketing Act of 1946), *aff'd*, 221 F. Supp.2d 1209 (E.D. Cal. 2002), *aff'd*, 66 Fed. Appx. 706, 2003 WL 21259771 (9th Cir. 2003); *In re Windy City Meat Co.*, 49 Agric. Dec. 272 (1990) (withdrawing from and denying to the respondent meat grading and acceptance services under the Agricultural Marketing Act of 1946); *In re Mirman Bros., Inc.*, 40 Agric. Dec. 201 (1981) (withdrawing from and denying to the respondent meat grading and acceptance services under the Agricultural Marketing Act of 1946); *In re William H. Hutton*, 38 Agric. Dec. 332 (1979) (withdrawing from and denying to the respondent meat grading and acceptance services under the Agricultural Marketing Act of 1946), *appeal dismissed*, No. 79-0634-N (S.D. Cal. May 12, 1980), *final order*, 39 Agric. Dec. 355 (1980); *In re National Meat Packers, Inc.* (Decision as to Charles D. Olsen), 38 Agric. Dec. 169 (1978) (withdrawing from and denying to respondent Charles D. Olsen meat grading and acceptance services under the Agricultural Marketing Act of 1946); *In re Gold Bell-I&S Jersey Farms, Inc.*, 37 Agric. Dec. 1336 (1978) (debaring the respondent from all benefits under the Agricultural Marketing Act of 1946), *aff'd*, No. 78-3134 (D.N.J. May 25, 1979), *aff'd mem.*, 614 F.2d 770 (3d Cir. 1980). *See also* (continued...)

debarment authority under the Agricultural Marketing Act of 1946 affected by any of the issues raised in the five subparts to the ALJ's question regarding the Secretary of Agriculture's debarment authority under the Agricultural Marketing Act of 1946.

Subpoena Authority Under the Agricultural Marketing Act of 1946

Second, the ALJ asks whether the Secretary of Agriculture is authorized by the Agricultural Marketing Act of 1946 to issue subpoenas, as follows:

Question:

Does the Secretary of Agriculture have the authority under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. §§ 1621-1631), to issue subpoenas and subpoenas duces tecum when timely requested by Complainant or Respondent and deemed appropriate by the Administrative Law Judge, for use in a debarment action pursuant to 7 C.F.R. § 52.54?

Subparts:

(1) Does it make a difference if a Respondent is a handler **required** to obtain inspection and certification in order to market the bulk of the produce it handles, under a different statute, the Agricultural Marketing Act of 1937, as amended (7 U.S.C. §§ 601-674) and Marketing Order 989 (7 C.F.R. part 989)?

(2) Does it make a difference if the debarment action and resulting administrative hearing are not explicit in the statute?

Certification to Judicial Officer at 3-4 (emphasis in original).

²(...continued)

Arrow Meat Co. v. Freeman, 261 F. Supp. 622 (D. Or. 1966) (affirming the Agricultural Marketing Service order withdrawing meat grading services under the Agricultural Marketing Act of 1946).

Answer:

This proceeding is conducted under the Agricultural Marketing Act of 1946 and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) and the Rules of Practice Governing Withdrawal of Inspection and Grading Services (7 C.F.R. pt. 50) [hereinafter the Rules of Practice]. The Agricultural Marketing Act of 1946 does not authorize the Secretary of Agriculture to issue subpoenas.³ The Rules of Practice explicitly limit the issuance of subpoenas to those authorized by the statute under which the proceeding is conducted, as follows:

§ 1.144 Judges.

.....
 (c) *Powers.* Subject to review as provided in this subpart, the Judge, in any assigned proceeding, shall have power to:

.....
 (4) Issue subpoenas as authorized by the statute under which the proceeding is conducted, requiring the attendance and testimony of witnesses and the production of books, contracts, papers, and other documentary evidence at the hearing[.]

§ 1.149 Subpoenas.

(a) *Issuance of subpoenas.* The attendance and testimony of witnesses and the production of documentary evidence from any place in

³*In re Mirman Bros., Inc.*, 40 Agric. Dec. 201 (1981) (stating the Agricultural Marketing Act of 1946 does not grant subpoena powers).

the United States on behalf of any party to the proceeding may be required by subpoena at any designated place of hearing if authorized by the statute under which the proceeding is conducted.

7 C.F.R. §§ 1.144(c)(4), .149(a) (footnote omitted).

Moreover, the Judicial Officer has consistently held that, under the Rules of Practice, an administrative law judge may only issue a subpoena as authorized by the statute under which the proceeding is conducted.⁴ The Rules of Practice neither provide an exception for actions that are not explicit in the statute under which the proceeding is conducted nor provide an exception for actions that may affect a respondent under another statute.

Done at Washington, DC

December 21, 2004

William G. Jenson
Judicial Officer

⁴See *In re Jim Fobber*, 55 Agric. Dec. 60, 68-69 (1996); *In re Robert Bellinger, D.V.M.*, 49 Agric. Dec. 226, 235 (1990).