

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. AMA-M-08-0069

In re: HEIN HETTINGA and ELLEN HETTINGA,
d/b/a SARAH FARMS,

and

GH DAIRY, d/b/a GH PROCESSING,

Petitioners

MEMORANDUM OPINION AND ORDER

This matter is before the Administrative Law Judge upon the Motion of the Petitioners for Judgment on the Pleadings. The motion seeks “a judgment dismissing the petition and certifying the right of the Petitioners to have their claims reviewed by an Article III court under 7 U.S.C. § 608(c)(15)(B) is appropriate.” The Respondent has filed a response to the Motion, opposes the Motion, and suggests that a hearing is appropriate to introduce evidence that the Milk Regulatory Equity Act (MREA) (codified at 7 U.S.C. § 608(c)(5)(M-N) is not a Bill of Attainder, but also seeks dismissal of the Petition on the basis that the Petitioners filed a Petition that the District Court told the Petitioners could not be considered in an administrative challenge.

At the prehearing conference held in this case on June 11, 2008, the parties appeared to be in general agreement that the threshold question of whether an Administrative Law Judge may grant the relief sought of declaring the Milk Regulatory

Equity Act unconstitutional might be disposed of by motion, provided the motion was appropriately limited. The Answer of the Respondent contained as its Second Defense the position that the petition failed to state a claim upon which relief could be granted. As I agree that the relief sought is not available from an administrative tribunal, the Petition will be dismissed.

The Petition in this action seeks both declaratory relief and restitution, seeking in eight separate paragraphs relief “to the extent that the Secretary has any power or authority to act and overrule Congress.” As the Judicial Officer recently found, an administrative tribunal has no authority to declare unconstitutional a statute that it administers. *In re Jerry Goetz, d/b/a Jerry Goetz and Sons*, 61 Agric. Dec. 282, 287 (2002).¹ Although the Respondent suggests that a hearing is “essential” to introduce facts that MREA is not a Bill of Attainder, given the limitation of availability of relief, it would appear that a different forum will need to address that question. Accordingly, the following Order will be entered.

ORDER

1. The Petition will be **DISMISSED** for failure to state a claim upon which relief might be granted.
2. This Order will become final without further proceedings 35 days after service hereof unless appealed to the Judicial Officer within 30 days after service as provided in the Rules of Practice.

¹ See, footnote 5 for the extensive listing of cases for this proposition.

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

Done at Washington, D.C.
August 26, 2008

PETER M. DAVENPORT
Administrative Law Judge

Copies to: Alfred W. Ricciardi, Esquire
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