

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0306

In re: Peter Cranston,  
Petitioner

**Order of Dismissal**

This matter is before the Administrative Law Judge upon the Motion of the Perishable Agricultural Commodities Branch of the Agricultural Marketing Service (PACA Branch) to Dismiss with Prejudice Petitioner Peter Cranston's Petition for Review and Demand for Oral Hearing filed on July 21, 2011 as well as the Petitioner's Counsel's request by letter for an extension of time in which to respond to the Motion which was sent by facsimile transmission to the Hearing Clerk's Office on August 10, 2011.

In most cases, a request for an extension of time in which to file a response is routinely granted as a matter of courtesy. In this case, however, a review of the procedural history compels a conclusion that the Petition for Review is sufficiently fatally flawed and defective that it is not subject to redemption. I accordingly conclude that I lack jurisdiction to review the responsibly connected determination and will proceed to address the jurisdictional issue before me without affording the Petitioner further additional time to respond to the Motion to Dismiss.

In this action, Peter Cranston seeks review of the determination of Karla D. Whalen, Chief of the PACA Branch, that he was "responsibly connected" to Americe,

Inc., d/b/a The Perimeter Group (Americe) during a period when Americe is alleged to have committed repeated and flagrant violations of the Perishable Agricultural Commodities Act of 1930, 7 U.S.C. §499a, *et seq.*, (PACA or the Act).<sup>1</sup>

As set forth in the Respondent's Motion to Dismiss, Karla D. Whalen's determination letter of April 5, 2011<sup>2</sup> (received by the Petitioner's attorney on April 6, 2011) cited the applicable rule of the Rules of Practice under the Perishable Agricultural Commodities Act, 1930 and provided a clear and unambiguous explanation of the procedural requirements for review of the determination.

Consistent with the information contained in the Chief's letter, that rule provides:

(d) Within 30 days of receipt of notification of the Chief's determination, a person who disagrees with such determination may file with the Hearing Clerk, pursuant to §1.130-1.151 of this title, a petition for review of the determination. 7 C.F.R. §47.49(d).

The instant Petition for Review, filed more than 90 days after the receipt of notification of the determination, is clearly not within the window allowed by the above rule, and as such, is not timely filed. The Rules of Practice are binding upon Administrative Law Judges and the Department's Judicial Officer. *In re Jack Stepp and William Reinhart*, 59 Agric. Dec. 260 (2000); *In re PMD Produce Brokerage Corp.*, 59 Agric. Dec. 344 (2000); *In re Far West Meats*, 55 Agric. Dec. 1033, 1036 (1996); *In re Hermiston Livestock Co.*, 48 Agric. Dec. 1989); and *In re Sequoia Orange Co.*, 41 Agric. Dec. 1062, 1064 (1982). Time limits for filing petitions for review are strictly construed and absent compliance with such time limits, jurisdiction does not exist to entertain

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<sup>1</sup> The disciplinary proceeding against Americe is pending before the Secretary. *In re: Americe, Inc., d/b/a The Perimeter Group*, Docket No. 10-0454.

<sup>2</sup> See, Docket Entry 3.

review. *See, In re William J. Reinhart and Reinhart Stables*<sup>3</sup>, 59 Agric. Dec. 721 (2000), 60 Agric. Dec. 241 (2001); *affirmed sub nom. William J. Reinhart v. USDA*, 39 Fed. Appx. 954 (6<sup>th</sup> Cir. 2002).

Accordingly, the Petition for Review will be **DISMISSED** with prejudice and **ORDERED** stricken from the Docket.

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

August 11, 2011

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Peter M. Davenport  
Chief Administrative Law Judge

Copies to: Paul T. Gentile, Esquire  
Jonathan D. Gordy, Esquire

Hearing Clerk's Office  
U.S. Department of Agriculture  
1400 Independence Avenue SW  
Room 1031, South Building  
Washington, D.C. 20250-9203  
202-720-4443  
Fax: 202-720-9776

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<sup>3</sup> In *Reinhart*, the time limitations were enforced despite the existence of ministerial errors in the case.

