

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 02-1134

September Term, 2002

Filed On: May 13, 2003 [748968]

PMD Produce Brokerage Corp.,

Petitioner

v.

Department of Agriculture, *et al.*,

Respondents

On Petition for Review of Orders of the Secretary of the
United States Department of Agriculture

Before: HENDERSON, RANDOLPH and GARLAND, *Circuit Judges*.

J U D G M E N T

This cause was considered on the record from the United States Department of Agriculture and on the briefs of counsel. It is

ORDERED that the petition for review be dismissed for lack of jurisdiction. Under the Hobbs Act, an aggrieved party must file a petition for review of a final agency order “within 60 days after its entry.” 28 U.S.C. § 2344. Here, the order at issue is date-stamped February 14, 2002. Respondents’ Appendix (RA) 1. Although PMD Produce Brokerage Corp. (PMD) did not file its petition for review until sixty-two days later, on April 17, 2002, its petition was timely under the Hobbs Act, it maintains, because the date of “entry” is the date on which the Department of Agriculture (USDA) mailed the order, which it “verily believe[s] was on or about February 22, 2002.” Br. for Pet’r at 11.

Even assuming that the date of “entry” is the date on which a final order is mailed, however, PMD has failed to demonstrate the timeliness of its petition. To support its belief that the order at issue was mailed “on or about February 22, 2002,” PMD relies solely upon the date on which it received the final order—February 25, 2002—and the declaration of its counsel that an employee of the United States Postal Service informed him via telephone that “certified mail with return receipt requested takes, on average, from one to three days to deliver from Washington, D.C. to New York City.” RA 24. PMD’s assertions are

plainly insufficient to establish February 22, 2002 as the final order's date of entry, particularly in light of the documentary evidence submitted by the USDA, which uniformly supports the conclusion that the final order was entered and mailed on February 14, 2002. *See* RA 9-22. PMD's petition is therefore dismissed as untimely. *See* 28 U.S.C. § 2344.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

For the Court:

Mark J. Langer, Clerk