

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY

Docket Nos. 11-0180 and 11-0252

In re: COREY LEA, COREY LEA INC.,  
START YOUR DREAM INC., and  
COWTOWN FOUNDATION, INC.,<sup>1</sup>

Petitioners

**ORDER DENYING “MOTION TO REVIEW AND RECONSIDER”  
AND REDIRECTING PETITIONER’S MOTION TO  
OFFICE OF ASSISTANT SECRETARY FOR CIVIL RIGHTS**

1. Introduction

By Decision and Order (D&O) issued May 26, 2011, I dismissed petitions for a hearing before the Office of Administrative Law Judges (OALJ) for the United States Department of Agriculture (Secretary; USDA) filed by Corey Lea, Corey Lea Inc., Start Your Dream Inc., and Cowtown Foundation, Inc. (Petitioners). The first Complaint and request for a hearing filed with OALJ on April 1, 2011<sup>2</sup> involves Petitioner Corey Lea’s complaint alleging discrimination, which was dismissed on April 25, 2010 by determination of USDA’s Office of the Assistant Secretary for Civil Rights (OASCR). On May 19, 2011, Corey Lea, together with the parties named in the above caption (Petitioners), filed a second “Original Complaint”.<sup>3</sup> I consolidated the matters in my D&O.

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<sup>1</sup> I have amended the original caption of this case to include the additionally named petitioning parties.

<sup>2</sup> That complaint was amended on April 18, 2011 and again on April 26, 2011.

<sup>3</sup> This complaint raised new allegations of discrimination, in addition to allegations of harm by tort and fraud. There is no evidence that Petitioners filed this complaint with OASCR or any other agency of USDA.

In my D&O, I found that OALJ had no jurisdiction to hear any of Petitioners' complaints, which invoked a number of statutes and regulations. On June 6, 2011, Petitioners filed<sup>4</sup> a "Motion to Review and Reconsider" with the Judicial Officer for USDA. On June 8, 2011, Petitioners filed a revised motion with the Hearing Clerk for OALJ.

Petitioners are pro se.

## 2. Petitioners' Stated Grounds for Review

Petitioners assert that the Judicial Officer has authority to review my D&O. Petitioners continue to contend that they have a right to a hearing before OALJ in these matters. Petitioners also maintain that they were denied due process when I consolidated the Complaint filed on May 19, 2011 with the earlier filed Complaint and dismissed them together for lack of jurisdiction.

## 3. Discussion

The Judicial Officer for USDA has authority to act as final deciding officer in adjudicatory proceedings subject to 5 U.S.C. §§ 556 and 557 and other proceedings listed in 7 C.F.R. §2.35. As I explained in the D&O, none of Petitioners' complaints or allegations fall within the statutes over which OALJ, and the Judicial Officer, have adjudicatory authority. Accordingly, the Judicial Officer has no jurisdiction to review my findings that OALJ lacked jurisdiction to adjudicate the Complaints, and that OASCR's April 25, 2011 Decision was the final agency Decision in the first complaint of discrimination. I therefore have construed Petitioners' motion to constitute a request to me to reconsider my D&O.

Petitioners have offered no new evidence or argument in support of altering or amending any of my findings. I continue to conclude that OALJ has no jurisdiction under the Administrative Procedure Act or any other statute to review Petitioners' complaints of program discrimination. The Secretary has not authorized OALJ to hear such cases, and the limited

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<sup>4</sup> Petitioners sent the motion directly to the Judicial Officer, who filed it with the Hearing Clerk.

authority conferred upon OALJ by Section 741 does not apply to Petitioners' complaints. I further continue to find that OALJ is not the appropriate agency to address Petitioners' claims of harm under tort or frauds, and Petitioners do not appear to have raised those issues with an agency of USDA with the authority to reach a determination on those complaints.<sup>5</sup>

To the extent that Petitioners believe that my D&O deprived them of a determination in the complaint filed with OALJ on May 19, 2011, I reiterate that I limited my inquiry to whether or not OALJ had authority or jurisdiction to adjudicate or address in any way Petitioners' Complaints. See, 7 C.F.R. §1.144. I made no findings of fact or conclusions of law regarding the substance of Petitioners' complaints. I consolidated the matters for the sake of administrative efficiency, and concluded that OALJ does not have jurisdiction to adjudicate Petitioners' Complaints. As I observed in my D&O, OASCR has the authority to make final determinations in complaints of discrimination<sup>6</sup>. Nothing in my D&O precludes Petitioners from raising concerns not addressed in OASCR's Determination of April 25, 2011 by filing an appropriate complaint of discrimination with OASCR or another appropriate agency of USDA, in compliance with prevailing regulations.

#### 4. Conclusion

Petitioners' motion shall be construed as a request for review of the April 25, 2011 determination by the Assistant Secretary for Civil Rights, who has authority to issue final determinations in complaints of discrimination. To the extent that Petitioners' Complaint filed with OALJ on May 19, 2011 represents a complaint of discrimination, that complaint is hereby referred to OASCR to process in accordance with prevailing regulations. Parenthetically, I note

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<sup>5</sup> Petitioners infer this in the motion, as they note that no other agency official addressed the later complaint.

<sup>6</sup> However, the scope of OASCR's authority is over Petitioners' claims of discrimination and other claims are not recognizable by OASCR.

that OASCR is not obliged to consider complaints that have not been made in compliance with the procedures set forth in the prevailing regulations.

Accordingly, Petitioners' motion shall be forwarded to OASCR for review.

So ORDERED this \_\_\_\_\_ day of June, 2011.

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Janice K. Bullard  
Administrative Law Judge