

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 06-5323

September Term, 2007

FILED ON: OCTOBER 4, 2007 [1071546]

HOLLY SUGAR CORPORATION, ET AL.,
APPELLANTS

v.

CHUCK CONNER, IN HIS OFFICIAL CAPACITY AS ACTING SECRETARY OF AGRICULTURE AND AS
CHAIRMAN OF THE COMMODITY CREDIT CORPORATION, ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 03cv01739)

Before: HENDERSON, ROGERS, and TATEL, *Circuit Judges*.

J U D G M E N T

This case was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties pursuant to D.C. CIR. Rule 34(j). It is

ORDERED AND ADJUDGED that the order of the District Court in *Holly Sugar Corp. v. Johanns*, No. 03-1739, slip op. (D.D.C. Aug. 1, 2006), be affirmed. Two years ago, this court held that 7 U.S.C. § 7283(b) unambiguously gives the Commodity Credit Corporation (CCC) discretion over setting the interest rate for sugar loans. *Holly Sugar Corp. v. Johanns*, 437 F.3d 1210 (D.C. Cir. 2006). Holly Sugar Corp. then moved for summary judgment before the District Court, arguing that the interest rate set by CCC is arbitrary and capricious and an unconstitutional tax. The District Court denied the motion for summary judgment and entered final judgment in favor of CCC.

The District Court denied summary judgment on Holly Sugar's arbitrary and capricious claim because the company failed to raise the claim in its complaint. *Holly Sugar*, No. 03-1739, slip op. at 8-9. We agree. Even under liberal notice pleading standards, Holly Sugar failed to present in its complaint the argument that CCC's selection of the particular interest rate was

arbitrary and capricious. Instead, the complaint raises only a *Chevron* claim, which was resolved in the previous appeal. *Holly Sugar*, 437 F.3d at 1213-14.

The District Court rejected Holly Sugar's unconstitutional tax claim, pointing out that the issue had been resolved in the earlier appeal. *Holly Sugar*, No. 03-1739, slip op. at 6. Holly Sugar disagrees, but it should have raised that issue in a petition for rehearing, not in a new motion before the District Court.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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.

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Deputy Clerk