

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	FCIA Docket No. 05-0007
)	
TOM J. CLAUSSEN,)	
)	Decision and Order
Respondent)	by Reason of Default

[1] This proceeding was initiated by a complaint filed on April 20, 2005, by the Manager of the Federal Crop Insurance Corporation, Complainant (frequently herein “the FCIC”). The complaint alleges that Respondent Tom J. Claussen (frequently herein “Respondent Claussen”) violated the Federal Crop Insurance Act (7 U.S.C. § 1501 et seq.) (frequently herein “the Act”) and the regulations promulgated thereunder governing the administration of the Federal crop insurance program (7 C.F.R. part 400).

[2] The FCIC requests that Respondent Claussen be required to pay a \$5,000 civil fine, and that Respondent Claussen be disqualified for a period of two years from receiving any benefit from any program listed in section 515(h)(3)(B) of the Act. 7 U.S.C. § 1515(h)(3)(B).

[3] On April 21, 2005, the Hearing Clerk sent to Respondent Claussen, by certified mail, return receipt requested, a copy of the complaint and a copy of the Rules of Practice, together with a cover letter (service letter). Respondent Claussen was informed in the complaint and in the service letter that an answer to the complaint should be filed in

accordance with the Rules of Practice within 20 days, and that failure to answer any allegation in the complaint would constitute an admission of that allegation. 7 C.F.R. § 1.136.

[4] The envelope containing the complaint, copy of the Rules of Practice, and service letter was sent to Mr. Tom J. Claussen, 29010-230th Avenue, Long Grove, IA 52756-9571, but was returned to the Hearing Clerk's Office marked "Returned to Sender - UNCLAIMED" by the U.S. Postal Service. The Hearing Clerk staff then, on June 21, 2005, sent the complaint with accompanying documents to Respondent Claussen at that same address via ordinary mail. The complaint was thereby deemed to have been received by Respondent Claussen on June 21, 2005. 7 C.F.R. § 1.137.

[5] Consequently, Respondent Claussen had until July 11, 2005, to file an answer to the complaint. 7 C.F.R. § 1.136(a). Respondent Claussen failed to file an answer to the complaint by July 11, 2005, as required. [Now, nearly four months later, he still has not filed an answer.]

[6] The FCIC filed a Motion to Enter a Default Decision on August 10, 2005. The Motion was sent to Respondent Claussen by the Hearing Clerk on August 10, 2005, with the Hearing Clerk's cover letter; but the envelope was returned to the Hearing Clerk's Office on September 26, 2005, marked "Returned to Sender - UNCLAIMED" by the U.S. Postal Service. The Hearing Clerk staff then, on September 28, 2005, sent the Motion with the accompanying cover letter to Respondent Claussen via ordinary mail.

[7] The Rules of Practice provide that the failure to file an answer within the time

provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. §1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139.

[8] Accordingly, the material allegations in the complaint, which are admitted by Respondent Claussen's default, are adopted and set forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139. *See* 7 C.F.R. §1.130 et seq.

Findings Of Fact

[9] Respondent Tom J. Claussen has a mailing address of 29010 - 230th Avenue, Long Grove, Iowa 52756-9517.

[10] Respondent Claussen was a participant in the Federal crop insurance program under the Act and the regulations for the 2000 crop year.

[11] Respondent Claussen insured his 2000 corn crop located on Unit 101 of Farm Service Number (FSN) 3540, approximately 117 acres, with Acceptance Insurance Company (AIC) through American Growers Insurance Company, Inc. (American Growers). [12] For the 2000 crop year, AIC was an approved insurance provider as described in sections 515(h) and 502(b)(2) of the Act, and FCIC reinsured this policy.

[13] On September 1, 2000, Respondent Claussen filed a MPCCI Notice of Loss with American Growers indicating that his corn crop on Unit 101 of FSN 3540 was damaged due to excessive rain.

[14] On October 31, 2000, Respondent Claussen certified and submitted to the Farm

Service Agency (FSA) Form CCC-666-LDP, Loan Deficiency Application and Certification, that he produced approximately 16,000 bushels of corn from Unit 101 of FSN 3540.

[15] On November 14, 2000, Respondent Claussen certified and submitted to American Growers a Production Worksheet showing that his corn production from Unit 101 on FSN 3540 was approximately 11,455.8 bushels, approximately 4,500 bushels less than the number of bushels measured by FSA.

[16] Based on the November 14, 2000, Production Worksheet certification of 11,455.8 bushels of corn, Respondent Claussen received an indemnity payment.

[17] On August 7, 2001, American Growers performed a claims audit on Respondent Claussen's corn production from Unit 101 of FSN 3540.

[18] Respondent Claussen signed an Adjuster Special Report on August 7, 2001, stating that the corn production from Unit 101 of FSN 3540 was all in one bin when measured by American Growers and that FSA measured two bins after the production was moved.

[19] Based upon the claims audit, American Growers determined that all of Respondent Claussen's corn production from Unit 101 of FSN 3540 could not fit into the one bin measured by its representative, so it reduced Respondent Claussen's overall indemnity amount that he received for his corn and soybean crops from \$16,805 to \$4,457.

[20] Therefore, as a result of the incorrect certification, Respondent Claussen received an indemnity overpayment from American Growers in the amount of \$12,348 (\$16,805 minus \$4,457).

[21] Respondent Claussen either knew or should have known that the certification of

production was obviously incorrect.

Conclusions

[22] Pursuant to section 515(h) of the Act (7 U.S.C. § 1515(h)) and subpart R of FCIC's Regulations (7 C.F.R. § 400.451-400.500), willfully and intentionally providing false or inaccurate information as detailed above is grounds for civil fines of up to \$10,000 for each violation, or the amount of the pecuniary gain obtained as a result of the false or incorrect information, and disqualification from receiving any monetary or nonmonetary benefit that may be provided under each of the following for a period of up to five years:

- (a) The Federal Crop Insurance Act (7 U.S.C. § 1501 et seq.);
- (b) The Agricultural Market Transition Act (7 U.S.C. § 7201 et seq.), including the noninsured crop disaster assistance program under section 196 of that Act (7 U.S.C. § 7333);
- (c) The Agricultural Act of 1949 (7 U.S.C. § 1421 et seq.);
- (d) The Commodity Credit Corporation Charter Act (15 U.S.C. § 714 et seq.);
- (e) The Agricultural Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.);
- (f) Title XII of the Food Security Act of 1985 (16 U.S.C. § 3801 et seq.);
- (g) The Consolidated Farm and Rural Development Act (7 U.S.C. § 1921 et seq.); and
- (h) Any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in the prices of agricultural commodities.

[23] Disqualification under section 515(h) of the Act will affect a person's eligibility to

participate in any programs or transactions offered under any of the statutes specified above.

[24] All persons who are disqualified will be reported to the U.S. General Services Administration (GSA) pursuant to 7 C.F.R. § 3017.505. GSA maintains and publishes a list of all persons who are determined ineligible from non-procurement or procurement programs in its Excluded Parties List System.

[25] Respondent Claussen willfully and intentionally provided false information to American Growers regarding the amount of corn that he actually produced.

[26] Respondent Claussen knew or should have known that the information was false at the time that he provided it.

[27] Respondent Claussen has willfully and intentionally provided false or inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the Federal Crop Insurance Act. 7 U.S.C. 1515(h).

[28] It is appropriate that Respondent Claussen (a) be assessed a civil fine of \$5,000; and (b) be disqualified from receiving any monetary or non-monetary benefit provided under each of the programs listed above for a period of two years. Consequently, the following Order is issued.

Order

[29] Respondent Claussen is hereby assessed a civil fine of \$5,000, as authorized by section 515 of the Act. 7 U.S.C. 1515. Respondent Claussen shall pay the \$5,000 civil fine by cashier's check or money order or certified check, made payable to the order of the "**Federal Crop Insurance Corporation**" and sent to

Federal Crop Insurance Corporation
Attn: Kathy Santora, Collection Examiner
Fiscal Operations Branch
6501 Beacon Road
Kansas City, Missouri 64133.

[30] Respondent Claussen is disqualified from receiving any monetary or nonmonetary benefit provided under each of the following for a period of two years:

- (i) The Federal Crop Insurance Act (7 U.S.C. § 1501 et seq.).
- (ii) The Agricultural Market Transition Act (7 U.S.C. § 7201 et seq.), including the noninsured crop disaster assistance program under section 196 of that Act (7 U.S.C. § 7333).
- (iii) The Agricultural Act of 1949 (7 U.S.C. § 1421 et seq.).
- (iv) The Commodity Credit Corporation Charter Act (15 U.S.C. § 714 et seq.).
- (v) The Agricultural Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).
- (vi) Title XII of the Food Security Act of 1985 (16 U.S.C. § 3801 et seq.).
- (vii) The Consolidated Farm and Rural Development Act (7 U.S.C. § 1921 et seq.).
- (viii) Any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in the prices of agricultural commodities.

[31] Unless this decision is appealed as set out below, Respondent Claussen shall be ineligible for all of the programs listed above beginning on **January 4, 2006**, and ending on **January 3, 2008**. As a disqualified individual, Respondent Claussen will be reported to the U.S. General Services Administration (GSA) pursuant to 7 C.F.R. § 3017.505. GSA publishes a list of all persons who are determined ineligible in its Excluded Parties List

System (EPLS).

[32] This Order shall be effective on the first day after this Decision and Order becomes final. This Decision and Order shall have the same force and effect as if entered after a full hearing and shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 7th day of November 2005

Jill S. Clifton
Administrative Law Judge

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

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

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SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in

§ 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of

objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145