

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

DNS-RMA Docket No. 07-0046

In re: JOHN GRAHAM III

Respondent

**DECISION AND ORDER**

This decision involves the appeal of the decision of Eldon Gould, the Debarring Official, Risk Management Agency (hereinafter "RMA"), Federal Crop Insurance Corporation, (hereinafter "FCIC"), United States Department of Agriculture to debar the Respondent John Graham III for a period of one year. Prior to the decision, the Respondent, through his representative, submitted written material to the Debarring Official, generally indicating that debarment would not be appropriate as he felt that no wrongdoing had occurred and providing mitigating factors which he wished to be considered. The letter imposing the debarment was dated October 26, 2006 and the appeal was initiated by a letter under the signature of the Respondent's representative, Dennis Chase, C.E.O. of ChaseMaster Corporation of Bastrop, Louisiana dated December 15, 2006.<sup>1</sup>

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<sup>1</sup> The Administrative Record is silent as to the date of actual receipt of the Notice of Debarment by the Respondent. The Respondent's representative indicates in his letter of December 15, 2006 that the Respondent received the notice on November 16, 2006 which would make the receipt of the appeal letter from the Respondent's representative by the Hearing Clerk on Monday, December 18, 2006 timely filed.

The Respondent, John Graham III - an individual

In May of 2003, while working as a loss adjuster within the Federal crop insurance program<sup>2</sup>, he was assigned to review corn claims for three policies. A review of the production worksheets prepared and submitted by the Respondent indicated that false and inaccurate information was included on three separate worksheets which had been previously submitted to Heartland Crop Insurance, Inc. (hereinafter "Heartland"), an insurance provider. As a result of the false and inaccurate information contained on the production worksheet, an indemnity payment of \$129,463 was paid to Lonestar Planting, Inc. to which it was not entitled.

The appeal which has been advanced by the Respondent is somewhat short on specifics, but asserts that the debarment should not be imposed because of:

1. Agency misconduct
2. The lack of serious regulatory cause
3. The application of *Darby v. Cisneros*<sup>3</sup>
4. Debarment would be unduly harsh as the Respondent derives his livelihood entirely from government contracts or programs
5. The absence of substantial evidence supporting the agency decision
6. A violation of due process rights
7. Arbitrariness of the decision
8. Imposition of debarment for an unlawful purpose

None of the above assertions has merit. With respect to the allegation of agency misconduct,

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<sup>2</sup> 7 CFR 457, *et seq.*

<sup>3</sup> *Darby v. Cisneros*, 509 U.S. 137 (1993).

it is initially noted that the language contained in the decision concerning finality of the decision is not inconsistent with other provisions allowing the appeal of the decision to an Administrative Law Judge. Even had RMA provided Heartland with a copy of the debarment decision, which the Complainant denies was done, such notification would be within the scope of the regulations and would merely duplicate the information placed upon Excluded Parties List System (EPLS) publicly accessible on the internet at <http://www.epls.gov/>. Given Heartland's contractual obligations prohibiting the use of any person that has been debarred, Heartland's actions were both appropriate and predictable.

The Respondent's implicit argument that there is a lack of serious regulatory cause and his arguments that the decision is arbitrary and not supported by substantial evidence is manifestly inconsistent with the Respondent's admissions that he not only failed to follow required procedures and to perform acts required of a loss adjuster with FCIC, but also submitted false and inaccurate information on the production worksheets submitted to insurance providers.

As noted in the Complainant's Response to Respondent's Appeal, the Respondent's reliance on *Darby* is misplaced<sup>4</sup> as the action taken and procedures followed in the debarment action and the appeal process are governed by 7 C.F.R. Part 3017, rather than the Administrative Procedures Act, 5 U.S.C. § 556 and 557.

Respondent's 4th argument is made that debarment would be unduly harsh as the Respondent has derived his livelihood entirely from government contracts or programs. While it is true that debarment might affect some individuals or entities to a greater extent than others, the

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<sup>4</sup> *Darby*, "We have recognized that the judicial doctrine of exhaustion of administrative remedies is conceptually distinct from the doctrine of finality."

Respondent remains free to continue to work in the insurance industry for insurance companies and adjust losses, provided however, that it is not in connection with Federal crop insurance policies. The contractual obligations of the Federal crop insurance program are straight forward. One who fails to meet those obligations, *a fortiori*, one who makes false and inaccurate statements while participating in the Federal crop insurance program, runs the risk of being debarred as has been done in this case. The proceedings leading to the debarment decision provided the Respondent with ample due process protections, including notice of the intended action and the possible consequences, an opportunity to present any matters which he wished the debarring official to consider (as was done through his Representative), and further allowed him an appeal of the decision. As such, there is no violation of the Respondent's due process rights.

Last, the Respondent asserts that the imposition of debarment was done for an unlawful purpose. The debarring official set forth well supported reasons for the debarment and why he believed debarment was necessary to protect the public interest. Accordingly, his decision is in accordance with law and will be affirmed.

The grounds for debarment are found in 7 C.F.R. § 3017.800 and include:

. . .

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

.....

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

.....

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

The debarment action taken by Federal Crop Insurance Corporation against the Respondent was prompted by a Southern Regional Compliance Office (SRCO) review (Exhibit 11) which concluded that the indemnity paid to Lonestar Planting, Inc. was not in accordance with Federal Crop Insurance Corporation (FCIC) approved policy and procedures and that, in particular, the actions of John Graham III were negligent in failing to recognize the late notice of crop loss; falsely reporting that the loss was consistent with that of other farmers in the area; and failing to recognize that it was practical for the insured to have attempted replanting<sup>5</sup>. The Respondent was interviewed on at least two occasions,<sup>6</sup> and admitted that certain elements of the information provided to the insurer were incorrect.

After careful consideration of both of the administrative records and the pleadings, the following Findings of Fact and Conclusions of Law are made.

### **FINDINGS OF FACT**

1. The Respondent, John Graham III, is an individual having a mailing address of 36 Pony Greer Road, Rayville, Louisiana 71269 and who at all times material to this action functioned as a loss adjuster within the Federal crop insurance program..

2. In May of 2003, the Respondent was assigned to review corn claims for three Federal crop insurance policies #110721, #110878, and #110744.

3. On May 8, 2003, the Respondent completed a Production Worksheet for Policy #110721 in the name of Lonestar Planting, Inc., falsely certifying that “578 & maps were used to verify acres

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<sup>5</sup> AR, Exhibit 11 at 2.

<sup>6</sup> Exhibit 11 makes note of two statements dated September 17, 2003. The Administrative

and shares. Loss was due to excessive moisture in area. Loss is similar in the area.” AR, Exhibit 7.

4. On May 9, 2003, the Respondent completed a Production Worksheet for Policy #110878 in the name of Bobby Dale Kelly, falsely certifying that “578 & maps were used to verify acres and shares. Loss was due to excessive moisture in area. Loss is similar in the area.” AR, Exhibit 8.

5. On May 9, 2003, the Respondent completed a Production Worksheet for Policy #110744 in the name of Karen Morris Kelly, falsely certifying that “578 & maps were used to verify acres and shares. Loss was due to excessive moisture in area. Loss is similar in the area.” AR, Exhibit 9.

6. The Respondent failed to follow approved FCIC procedures and policies concerning the lack of recognition of untimeliness of the notice of loss, the computation of a “replant window of opportunity”<sup>7</sup> and in gathering information concerning other farms in the area and applicable weather conditions. In a written statement dated November 18, 2004, the Respondent admitted that he did not verify the conditions of surrounding farms as noted on the three Production Worksheets and that the statements in question were in fact false.

7. The records of the Louisiana Office of State Climatology, Southern Regional Climate Center (SRCC), reflect that in 2003, Richland Parrish, Louisiana (where each of the three crops were located) had only one significant rainfall event which happened on April 7, 2003 and that the rest of the month was relatively dry, with no continuous or heavy rainfall during the month of April of 2003. AR Exhibit 18 (Ex. 7, Page 3 of 3 and Ex 8).

8. Corn yields in Richland Parrish, Louisiana in 2003 were 21% higher on the average than the average for the previous 10 years. AR, Exhibit 19 at 4. Of the 34,000 acres of corn planted in

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Record contains a statement dated November 18, 2004. (AR, Exhibit 12).

<sup>7</sup> AR, Exhibit 11, page 2

the parrish, 32,600 acres were harvested. Lonestar Planting, Inc.'s unharvested 1,045.6 acres amounted to 75% of the 1400 unharvested acres in the parrish, rebutting the statement that the loss by Lonestar Planting, Inc. was similar to that of other farms in the area. *Supra*.

9. As a result of the false and inaccurate completion of the Production Worksheet for Policy #110721 by the Respondent, the policy holder, Lonestar Planting, Inc. received an indemnity payment of \$129,463 to which it was not entitled.

### **CONCLUSIONS OF LAW**

1. The Secretary has jurisdiction in this matter.

2. The Respondent, John Graham III, failed to follow FCIC approved policy and procedures in connection with the adjustment of three Federal crop insurance loss claims, including his failure to recognize the untimeliness of the loss notification, his failure to compute a replant window of opportunity and his failure in collecting information concerning other farms in the area and applicable weather conditions.

3. The Respondent knowingly and willfully completed and falsely certified Production Worksheets for policy numbers 110721, 110878 and 110744 which contained inaccurate and false statements. The inaccurate and false statements resulted in an indemnity payment to Lonestar Planting, Inc. for policy #110721 in the amount of \$129,463 to which it was not entitled.

4. As I agree with so much of the decision of the Debarring Official that the Respondent violated the terms of a public agreement or transaction so seriously as to affect the integrity of an agency program as set forth in the letter of October 26, 2006, I conclude that his decision is in accordance with the law and regulations; is based upon the applicable standard of evidence; is not arbitrary or capricious; and does not constitute an abuse of the Debarring Official's discretion.

Accordingly, the following Order is entered.

**ORDER**

It is **ORDERED** that the decision of Eldon Gould, the Debarring Official, in his debarment letter of October 26, 2006 is **AFFIRMED** as to John Graham III.

Copies of this Decision shall be served upon the parties and the Debarring Official by the Hearing Clerk's Office.

Done at Washington, D.C.  
February 27, 2007

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**PETER M. DAVENPORT**  
Administrative Law Judge

Copies to: Dennis Chase  
Donald A. Brittenham, Jr., Esquire  
Eldon Gould

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