

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

FCIA Docket No. 08-0154

In Re: MICHELLE FLEENOR,
d/b/a CT FARMS,

Respondent

DEFAULT DECISION AND ORDER

This proceeding was initiated by a Complaint filed on June 30, 2008, by the Manager of the Federal Crop Insurance Corporation, Complainant (frequently herein “the FCIC”). The Complainant is represented by Mark A. Simpson, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1718 Peachtree Road, Suite 576, Atlanta, Georgia 30309-2409.

The Complaint alleges that Michelle Fleenor, d/b/a CT Farms, the Respondent (hereinafter “Respondent Fleenor”) violated the Federal Crop Insurance Act (7 U.S.C. § 1501 *et seq.*) (“the FCIA” or “the Act”) and the regulations promulgated thereunder governing the administration of the Federal crop insurance program (7 C.F.R. part 400). The FCIC has requested that Respondent Fleenor be required to pay a \$2,000 civil fine, and that Respondent Fleenor 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).

On July 1, 2008, the hearing Clerk sent to Respondent Fleenor, 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 Fleenor 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. The envelope containing the Complaint, Rules of Practice, and service letter was served on Respondent on July 3, 2008 (see Return Receipt in the record file). Respondent Fleenor had until July 23, 2008, to file an answer to the Complaint. 7 C.F.R. § 1.136(a). Respondent Fleenor failed to file an answer to the Complaint by July 23, 2008, as required. [Now, two months later, she still has not filed an answer.] On August 28, 2008, the FCIC filed a Motion That Complaint Be Deemed Admitted. Complainant has received no response from Respondent.

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. Accordingly, the material allegations in the Complaint, which are admitted by Respondent Fleenor's default, will be adopted and set forth herein as Findings of Fact and this Decision and Order 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

1. Respondent Michelle Fleenor, d/b/a CT Farms, has a mailing address of 24121 Young Drive, Bristol, Virginia 24202. CT Farms is a general partnership established in the State of Virginia in February 2002. Respondent is an owner of CT Farms with a 20 percent interest.
2. Respondent Fleenor was a participant in the Federal crop insurance program under the Act

and the regulations for the 2003 crop year.

3. For crop year 2003, Respondent Fleenor insured Farm Serial Number (FSN) 7542, unit 0100 in Washington County, Virginia under a Multiple Peril Crop Insurance policy (Policy Number 723292) with Rural Community Insurance Services (RCIS), managing agent for Rural Community Insurance Company, an approved insurance provider as described in §515(h) and 502(b)(2) of the Act. FCIC reinsured this policy.

4. Respondent Fleenor was required under the Common Crop Insurance Policy, Basic Provisions for 2003 (01-BR), to submit the date the insured crop was planted. For crop year 2003, the final planting date for burley tobacco in Washington County, Virginia was June 30, 2003.

5. Respondent Fleenor certified on a RCIS Acreage reporting Form dated July 15, 2003 that she had planted 2.95 acres of burley tobacco on FSN 7542 on June 27, 2003 and that she had a 100 percent interest in the crop on FSN 7542. The certification above the Respondent Fleenor's signature stated "I submit this report as required on the above MPCCI or alternative policy and certify that to the best of knowledge and belief the information is correct and includes my entire interest in all acreage of the reported crops planted..."

6. Respondent Fleenor's partner, Timothy Mays, on behalf of CT Farms, certified to the Farm Service Agency (FSA) on July 15, 2003 and July 24, 2003 Acreage Report Farm Summary forms (FSA-578) that in crop year 2003, burley tobacco was planted on FSN 7542, tract 25370, fields 1, 2, 3, 4 and 7.

7. On or about August 29, 2003, Respondent Fleenor filed a loss claim with RCIS, indicating that the burley tobacco on CT Farms was damaged due to excessive precipitation that

occurred during the months of June and July of 2003 and because of the representations was paid under her policy the amount of \$6,034 for the loss to the burley crop.

8. Thereafter, FCIC received notification from an anonymous individual concerned about the late planting dates of CT Farms and concerns arose from FSA regarding discrepancies from the Crop Disaster Program.

9. On October 15, 2003, a RCIS loss adjuster inspected CT Farms and looked at all of the Respondent's fields. The loss adjuster observed that all of the insured burley tobacco had been harvested and the fields had been disked. The adjuster further noted that the personal uninsured tobacco of Respondent Fleenor's partner was being harvested.

10. On October 22, 2003, FSA representatives visited CT Farms to determine tobacco acreage. The FSA representatives observed some of the acreage had been harvested and disked, but the acreage did not appear to have been planted to tobacco. The FSA representatives observed approximately 14 acres of unharvested tobacco which was later determined to belong to Respondent Fleenor's partner and that the partner's tobacco was uninsured. From the appearance of the field, FSA representatives concluded that a weed eater had been used in the tobacco fields and that weeds and Johnson grass were approximately head high around the edges of the field.

11. Respondent Fleenor certified to RCIS a Production Worksheet dated January 7, 2004 indicating that she had planted 1.91 acres of burley tobacco on FSN 7542 in crop year 2003 and that she had sold 258 pounds of production to Philip Morris.

12. FCIC requested the Office of Strategic Data Acquisition and Analysis perform a Remote Sensing Satellite Imagery to verify if tobacco was planted on FSN 7542. On the basis of the

imagery, it was concluded that between June 2, 2003 and July 4, 2003 that the field in question could not have been planted in burley tobacco as had been reported.

13. Respondent Fleenor's tobacco production was not comparable to the area and the production was well below the average of neighboring fields. CT Farms produced only 142 pounds of burley tobacco per acre; neighboring growers averaged 1,184 pounds per acre. Respondent Fleenor's partner's uninsured burley production on FSN 7542 was 500 pounds more per acre than the insured crop.

14. In crop year 2003, there were 184 other units of tobacco losses due to excessive precipitation in Washington County, Virginia. These units produced an average of 1,752 pounds of burley tobacco per acre. The Washington County loss ratio for burley tobacco, excluding CT Farms was 4.22. CT Farm's ratio was 9.32 (more than twice the county ratio excluding CT Farms).

15. On May 23, 2003, Respondent's partner signed a FSA Form CCC-502A indicating that the Respondent Fleenor did not provide any capital for her tobacco crop and that she did not acquire a loan to sustain the crop in 2003.

16. On February 22, 2006, Respondent Fleenor signed a written statement taken by FCIC investigators indicating that she did not play an active role in the operation of CT Farms, that Timothy Mays was the controlling partner, and that she was not consulted or involved in the decision making process of farm operation. She further could not provide any detailed or definitive information regarding the farming operation, including farm practices used, processing and care of the crop, planting dates, storage or equipment used.

17. On the basis of the investigation, FCIC determined that the Respondent Fleenor had

misrepresented material facts and did not have a bona fide insurable interest in the burley tobacco on FSN 7542 and therefore was ineligible for crop insurance for the crop year 2003. As a result of the FCIC determination, RCIS deleted Respondent's burley tobacco policy, revised her acreage report to zero and assessed a \$6,034 overpayment for the indemnity that Respondent Fleenor received to which she was ineligible and not entitled to receive.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent Fleenor intentionally misrepresented her harvested burley tobacco production for the 2003 crop year.
3. Respondent Fleenor knew or should have known that the information was false at the time that she provided it.
4. As a result of her intentional misrepresentations, Respondent Fleenor received an indemnity overpayment of \$6,034 in 2003.
5. Respondent Fleenor willfully and intentionally provided false information to the insurer and to the Federal Crop Insurance Corporation with respect to an insurance plan or policy under the Federal Crop Insurance Act. 7 U.S.C. § 1515(h).
6. Pursuant to section 1515(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), the conduct of willfully and intentionally providing false or inaccurate information as detailed above in the Findings of Fact constitutes grounds for a civil fine 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 non-monetary 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 non-insured 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. This includes, but is not limited to, Title I of the Farm Security and Rural Investment Act of 2002.

7. 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. 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.

8. It is appropriate that Respondent Fleenor (a) be assessed a civil fine of \$2,000; and (b) be

disqualified from receiving any monetary or non-monetary benefit provided under each of the programs listed above for a period of three years.

Order

1. Respondent Michelle Fleenor, is hereby assessed a civil fine of \$2,000, as authorized by section 515(h)(3)(A) of the Act. 7 U.S.C. 1515(h)(3)(A). Respondent Fleenor shall pay the \$2,000 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.

2. Respondent Michelle Fleenor, is disqualified from receiving any monetary or non-monetary benefit provided under each of the applicable laws identified above for a period of two years, pursuant to section 515(h)(3)(B) of the Act. 7 U.S.C. 1515(h)(3)(B).

3. Unless this decision is appealed as set out below, Respondent Fleenor shall be ineligible for all of the programs listed above beginning on the first day after this Decision and Order becomes final. As a disqualified individual, Respondent Fleenor 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).

22. This Order shall be effective on the first day after this Decision and Order becomes final. This Decision and Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

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

Done at Washington, D.C.
October 28, 2008

PETER M. DAVENPORT
Administrative Law Judge