

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

FCIA Docket No. 09-0121

In re: CRYSTAL PORTER REESLY,
formerly CRYSTAL PORTER,

Respondent

DECISION AND ORDER

On May 21, 2009, William J. Murphy, the Acting Manager of the Federal Crop Insurance Corporation, United States Department of Agriculture, (“FCIC”) initiated this disciplinary proceeding against the Respondent by filing a complaint alleging violations of the Federal Crop Insurance Act, (7 U.S.C. § 1501, *et seq.*) (the “Act”). On June 11, 2009, Counsel for the Respondent filed an Answer which denied generally the material allegations of the Complaint.

As the issues in the instant action and a related case¹ involved many of the same facts and the crops giving rise to the actions being brought were raised on the same farm in Russell County, Virginia, this action and that brought against the Respondent’s mother, Mildred Porter, were consolidated for the purposes of hearing; however, by letter dated September 8, 2009 prior to the hearing, Respondent’s counsel advised the Administrative Law Judge that the Respondent no longer wished to pursue the action. At a teleconference on September 17, 2009, Counsel for the Respondent confirmed the contents of his September 8, 2009 letter indicating that Crystal Porter Reesly no longer

¹ *In re: Mildred Porter*, FCIA Docket No. 09-0120 (February 4, 2009)

wished to contest the allegations contained in the Complaint and I directed that the parties submit a Consent Decision. The failure to file a Consent Decision was again broached with the parties in the Order entered on December 22, 2009.

As it now appears that despite the earlier indications that the action would no longer be contested, the parties have been unable to agree upon the terms of a Consent Decision, and rather than allowing further cothurnal posturing and delay, I will consider the Respondent's desire to no longer contest the action to be an admission of the facts alleged in the Complaint, a waiver of her right to a hearing, and will enter the following Findings of Facts, Conclusions of Law and Order.

Findings of Fact

1. Crystal Porter Reesly, formerly Crystal Porter, is an individual residing in Lebanon, Virginia.
2. On September 10, 2002, Crystal Porter, later Crystal Porter Reesly, granted her mother Mildred Porter power of attorney appointing her to act for her and in her stead in connection with Farm Services Agency (FSA) and Commodity Credit Corporation (CCC) programs by completing Power of Attorney Form, FSA Form 211 which granted Mildred Porter authority to act as Respondent's attorney-in-fact with respect to all FSA and CCC programs and crops.
3. On February 26, 2004, Mildred Porter, the Respondent's mother signed a Multiple Peril Crop Insurance Application and Reporting Form transferring the coverage of her burley tobacco crop on Farm FSN 2017 to 4 States Crop Insurance Service, Inc. On the same date, Crystal Porter Reesly's coverage was also transferred to the same company.

4. For the 2004 crop year, Rain and Hail, LLC was the managing general agent for 4 States Crop Insurance Services, Inc., an approved insurance provider as described in 515(h) and 502(b)(2) of the Act.

5. On or about July 14, 2004, using a Power of Attorney granted to her by Crystal Porter Reesly, Mildred Porter falsely completed the Rain and Hail Acreage Report on her daughter Crystal Porter Reesly's behalf indicating that her daughter had zero acres of tobacco when in fact Crystal Porter Reesly had planted 2 or more acres of burley tobacco.

6. On or about July 14, 2004, Mildred Porter revised the FSA Form 578 certification to reflect that Crystal Porter Reesly had a 100% interest in 2.0 acres of tobacco on Farm FSN 2017.

7. Respondent Mildred Porter submitted a crop loss claim under her federally insured crop insurance policy for the insured tobacco grown for the 2004 crop year as well as a claim for a crop disaster payment.

8. Mildred Porter's burley tobacco yield per acre was only 337 pounds per acre; the Respondent's yield per acre was 3,349 pounds per acre²; however, the county average for Russell County, Virginia was 1,782 pounds per acre.

9. Although tobacco yields for the year were lower than average throughout Russell County, Virginia as a result of adverse weather, the pound per acre burley tobacco yield of Mildred Porter for the crop year 2004 was significantly less without further intervening cause than that estimated for her crop by RH loss adjuster Billy Smith who

² Although not addressed by the factual allegations of the Complaint which are being deemed admitted in this case, during the *Porter* case, evidence was admitted that the Respondent may have raised four acres rather than the two reported which would have brought her per acre yield to an amount slightly less than the county average, but still well in excess of the estimated yield for her mother's insured crop.

performed a Growing Season/Pre-harvest Inspection of her tobacco acreage on August 25, 2004.

10. Burley tobacco production was shifted from Mildred Porter's insured acreage to the Respondent's uninsured acreage in order for Porter to claim a crop insurance loss.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Using a power of attorney granted to her by the Respondent, Mildred Porter falsely certified the Respondent as growing zero pounds of burley tobacco when in fact she grew two, if not four acres of burley tobacco.
3. The acts of Mildred Porter using the power of attorney granted to her by her daughter are legally binding and Crystal Porter Reesly is responsible for them as if she had performed them herself.
4. The reporting of false or incorrect acreage or production represents a material misrepresentation of fact under the Federal Crop Insurance program.
5. Crystal Porter Reesly marketed tobacco which was not grown on her reported acreage.

Order

1. Pursuant to section 515(h)(3)(B) of the Act (7 U.S.C. § 1515(h)(3)(B)) and FCIC's regulations (7 C.F.R. part 400, subpart R), the Respondent Crystal Porter Reesly is disqualified from receiving any monetary or nonmonetary benefit provided under each of the following for a period of two years:

- (a) Subtitle A of the Federal Crop Insurance Act (7 U.S.C. §§ 1501-1524);

- (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 the 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.

2. Unless this Decision and Order is appealed as set out below, the period of ineligibility for all programs offered under the above listed Acts shall commence 35 days after this decision is served. As a disqualified individual, the Respondent 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).

3. A civil fine of \$5,000 is imposed upon the Respondent pursuant to sections 515(h)(3)(A) and (h)(4) of the Act (7 U.S.C. §1515(h)(3)(A) and (4)). This civil fine shall be paid by cashier's check or money order or certified check, made payable to the order of the "**Federal Crop Insurance Corporation**" and sent to:

USDA/RMA
Beacon Facility-Stop 0814
P.O. Box 419205
Kansas City, Missouri 64141

4. Should the Respondent pay a civil penalty of \$2,000 within 30 days of service of this Order upon her, the balance of the civil penalty of \$5,000 will be suspended and one year of the two year period of disqualification will also be suspended, provided, however, that the Respondent commit no further violations under the Act for a period of five years from the date hereof. In the event of evidence further violations, upon Motion of the Complainant, the suspended portion of the civil penalty and period of disqualification shall be reinstated.

5. This Decision and Order shall be effective 35 days after this decision is served upon the Respondent unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

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

Done at Washington, D.C.
February 18, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge

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