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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 15-0018

In re:

John R. Shoup d/b/a
Dinsdale Elevator

Respondent

Order Granting Complainant's Motion for Summary Judgment

Procedural History

On July 6, 2015, Complainant, the Agricultural Marketing Service ("AMS") filed a motion for summary judgment in the case captioned above. The motion was proffered pursuant to section 1.143(b) (7 C.F.R. § 1.143(b)) of the rules of practice that govern administrative proceedings arising under the Soybean Promotion, Research and Consumer Information Act (7 U.S.C. §§ 6301-6311) ("Act"), and the Order (7 U.S.C. §§ 1220.101 to 1220.257) ("Order"), and the Rules and Regulations issued pursuant to the Act (7 C.F.R. §§ 1260.301-1260.314) ("Regulations") and was based on all of the pleadings and papers filed in this matter and the memorandum in support attached to the motion.

The Complainant's October 30, 2014 complaint and July 6, 2015 motion for summary judgment averred that the Respondent failed to pay assessments on soybeans he purchased from producers from November 1, 2009 through August 16, 2013 and; further, that the Respondent failed to file reports as required by the Act and Regulations on soybeans he purchased on six separate occasions from December of 2011 to July of 2013.

On November 24, 2014, the Respondent filed an answer to the complaint which denied in general the violations in the complaint. Subsequently, Administrative Law Judge Bullard issued an order providing for the exchange of exhibits. The parties exchanged exhibits pursuant to that order.

On July 6, 2015, Complainant filed a motion for summary judgment and on July 20, 2015, Respondent filed a response in opposition to the motion for summary judgment. A hearing date was initially set for July 14, 2015; however, during a conference call with Judge Bullard and the parties, the Respondent asserted that another entity is the collecting person and therefore that he was not responsible for paying the late fees. On October 21, 2015 Judge Bullard issued an Order directing both parties to "file with the Hearing Clerk for OALJ any and all evidence that supports each party's position on that issue, together with written argument that includes precedent and statutory legislative guidance by not later than December 4, 2015."

Complainant filed a timely response to that Order on December 4, 2015 which provided full support for its position that the Respondent was responsible for paying the subject late fees and renewing its motion for summary judgment on the underlying substantive issues as charged in Complainant's October 30, 2014 complaint and July 6, 2015 motion for summary judgment. Respondent failed to file a response to the Order.

By Order issued on August 23, 2016, following Judge Bullard's retirement from Federal Service, the above-titled case was reassigned to the Docket of Chief Administrative Law Judge Bobbie J. McCartney.

The Act

The Soybean Promotion, Research and Consumer Information Act (7 U.S.C. §§ 6301-6311) ("Act") provides that it is in the "public interest to authorize the establishment, through the exercise of the powers provided in this subtitle, of an orderly procedure for developing, financing through assessments on domestically-produced soybeans, and implementing a program of

promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace . . . ." 7 U.S.C. § 6301. The Act and the regulations issued pursuant to the Act require that the first purchaser of soybeans collect an assessment from soybean producers. The assessment collected by the first purchaser is then submitted in a timely manner along with a report to a qualified state soybean board in order to finance soybean research and promotion programs. See 7 C.F.R. § 1220 .233, 1220.311 and 1220.312.

The Act provides that a civil penalty of not more than $1,000 may be assessed for each violation. The Act further provides that in a case of willful failure to pay, collect or remit an assessment an additional penalty equal to the amount of such assessment will apply. See 7 U.S .C. § 6307 (c)(1)(B). The Act provides that a cease and desist order may be issued requiring a person to cease from further violations. See 7 U.S.C. §6307 (c)(2).

The Violations

The Respondent in his answer denied in general the allegations in the complaint. However, the exhibits attached to the Complainant's July 6, 2015 motion for summary judgment, including exhibits which contained the signature of the Respondent, establish that the Respondent violated the Act and Order by failing to pay the late fee for paying assessments in an untimely manner and for failing to file reports with a qualified state soybean board for the assessments he collected from November 1, 2009 to October 30, 2014. These exhibits are summarized below and are attached to Complainant's Exhibits in Support of Complainant's July 6, 2015 motion for summary judgment.

The Documents obtained from the Respondent establish that he paid assessments late from November 1, 2009 to August 16, 2013. The Respondent submitted a Form LS-46 (CX-1) to the

qualified state soybean board for Iowa which is called the Iowa Soybean Association on or about September 28, 2011. The Respondent noted on the form that the assessments covered a four year time period from 2009 to 2013. Section 1220.223(c) (2) of the Order requires that the amount of the assessments owed be increased by 2% each month following the month in which the assessments were due. Thus, the Respondent by failing to assessments purchased from soybeans producers from November 1, 2009 to July 31, 2011 owes a late under Section 1220.223(c)(2). See CX-1 and CX-2.

The Documents obtained from the Respondent establish that he paid assessments due on soybeans he purchased from producers from February 1st through July 31, 2013 on or about August 15, 2013. See CX-4 and CX-5. The Respondent notes on Form LS-46 that he has not paid the late fee. See CX-4.

Accordingly, the Respondent as the first purchaser failed to pay assessments in a timely manner and he failed to pay the late fee on assessments he submitted late. Furthermore, the Respondent failed to file reports (Form LS-46) on six occasions from December 2011 to July 2013 for soybeans that he purchased from producers. Specifically, the Respondent failed to file reports (LS-46) in December 2011, January 2012, February 2012, March 2012, July 2012 and July 2013.

No material facts in dispute

Complaint's Exhibits

CX-1 Report and Remittance of Amount Collected
CX-2 Dinsdale Elevator Check #7217
CX-3 Dinsdale Elevator Invoice No. 82492
CX-4 Report and Remittance of Amount Collected 8-15-2013
CX-5 Dinsdale Elevator Check #7757
CX-6 Dissolution of Dinsdale Elevator September 10, 1997

Respondent's Exhibits

RX-#1 Page one of 2013 Schedule K-1 for J & M Fam1, LLC
RX-#2 Three documents from the Secretary of State showing that J & M Farm, LLC is a separate entity
RX-#3 Corn Checkoff Compliance Report page one
RX-#4 Page one of Accountants Financial Statement as of April 30, 2013 showing the reference to J & M Farm, LLC d/b/a Dinsdale Elevator
RX-#5 Copies of Dinsdale Elevator Check Nos. 7217, 7344, 7417, 7477, 7635, 7757, 7853,8174, 8221
RX-#6 Page one of 2012 Schedule K-1 for J & M Farm, LLC
RX-#7 Page one of 2011 Schedule K-1 for J & M Farm, LLC
RX-#8 Page one of Tama County Assessor's Property Reports for Parcel Numbers 0213327008, 0213330001, 0213329008
RX-#9 State of Iowa Grain Dealer License of J & M Farm, L.L.C.
RX-#10 Statement of Account from GNB Bank showing that account number 2021862 has a name of "J & M Farm, LLC d/b/a Dinsdale Elevator."
RX-#11 2011 Iowa form 1065 for J & M Farm, LLC
RX-#12 2011Reviewed Financial Statements with Accountants' Report for J & M Farm, LLC
RX-#13 Warehouse Receipt for J & M Farm, LLC d/b/a Dinsdale Elevator

Respondent through his attorney argues that another entity, J & M Farm, LLC d/b/a Dinsdale Elevator, identified himself in the reports he filed with the Iowa Soybean Association as the first purchaser. Respondent's Exhibits are insufficient to support his claim that Respondent is not the entity responsible for collecting assessments.

First, under the Soybean Order, in order for J & M Farm, LLC to be responsible for paying the late fee, J & M Farm would have to be the first purchaser of soybeans. The Respondent presented no evidence to show that J & M Farm was the first purchaser. Indeed, the evidence established that the Respondent was the first purchaser because he paid the assessments. See Exhibits CX -1 and CX-3. Further, the checks that Respondent signed list the entity of "Dinsdale Elevator". See Exhibits CX-2 and CX-5. According to the records of the Iowa Secretary of State, Dinsdale Elevator was dissolved on May 18, 2000. Although, both Respondent and J & M Farm,

LLC are using the name "Dinsdale Elevator" apparently neither registered that name as its business name in Iowa. Furthermore, it is not material under the Act as to the activities of other business entities that the Respondent operates or if those other business entities use a common business name to determine who is the first purchaser of soybeans. The material evidence establishes that Respondent is the first purchaser as defined in the Act and Order. Further, the Respondent indicated he was the first purchaser by submitting Form LS-46.

The exhibits that the Respondent submitted do not support his argument that J & M Farm, LLC is the entity that was the first purchaser of soybeans. First, it is unclear from the exhibits that the Respondent submitted as to that status of J & M Farm. The Respondent's Schedule K-1 (RX-1) lists the Respondent as being a general partner. However, the financial statements for J & M Farm lists the Respondent with the title of "member". See RX-6 p. 1.

The use of the term "member" by the Respondent would indicate that J & M Farm was a corporation with shareholder members or a cooperative with members. However, the Schedule K-1 (RX-1) that the Respondent submits for income tax purposes lists the Respondent as being a partner. J & M Farm, LLC lists self as doing business as Dinsdale Elevator. See RX-8, RX-7, RX-6, RX-5 and RX-1. However, the business entity filings with the Iowa Secretary of State list J & M Farm, LLC without listing that it is doing business under another name. See RX-2 and RX-3. Therefore, the evidence that the Respondent submitted does not support that J & M Farm is the first purchaser of soybeans and therefore subject to the requirements in the Soybean Act and Order.

Assuming arguendo that J & M Farm, LLC is a corporate entity that was responsible for collecting and remitting the assessments, the corporate veil must be pierced to prevent the

complete frustration of the operation of the Soybean Act and Order. See In re Mil-Key, Farm, Inc., 54 Agric. Dec. 56, 72 (1995). A court may pierce the corporate veil when an individual or individuals are responsible for the management, direction and control of the activities of the corporation. See In re Trenton Livestock, Inc. et al, 41 Agric. Dec. 1965 (U.S.D.A.), 1982 WL 37604**6.

Notably, the only individuals that are involved in J & M Farm according to the Respondent's exhibits, are the Respondent and his son. The Respondent asserts that he is involved with several entities including J & M Farm. The Respondent raises his association with J & M Farm in order to circumvent the regulatory requirements in the Soybean Order. In particular, the Respondent argues that J & M Farm is responsible for paying the assessments due on the soybeans he marketed, failing to remit reports in a timely manner and for paying the late fees for assessments that were repeatedly paid late. However, the Respondent paid the assessments due with checks that list "Dinsdale Elevator" and not J & M Farm. See CX-2 and CX-5. As the evidence shows, the checks that were used to pay the assessments were not from J & M Farm. The Respondent managed, directed and controlled the activities of J & M Farm since he lists himself as a partner. See RX-1. Dinsdale elevator is a business name that the Respondent uses to operate J & M Farm. However, the corporate entity known as "Dinsdale Elevator" ceased to operate in 1997. CX-6.

Respondent failed to establish that some other corporate entity was the first purchaser of soybean under the facts of the instant case. Indeed, the evidence submitted by the Respondent shows that J & M Farm handles corn and paid assessments under a state program. RX-5, RX-8. The Respondent submitted no evidence to show that J & M Farm or any other corporate entity is the first purchaser of the soybeans but rather the evidence of record reflects that the Respondent purchased and paid assessments on from November 2009 to August 2013.

Assuming arguendo that Respondent is involved with a corporate entity, it is appropriate to pierce the corporate veil to prevent the Respondent from circumventing the regulations contained in the Soybean Act and Order that require the first purchaser to pay late fees for assessments that the first purchaser remits late.

In Bruhn's Freezer Meats v. United States Department of Agriculture, 438 F.2d 1332, 1343 (C.A. 8, 1971), the Court held:

> The law is we settled that the "corporate entity may be disregarded when the failure to do so would enable the corporate device to be used to circumvent a statute." Schenley Distillers Corp. v. United States, 326 U.S. 432, 437, 66 S. Ct. 247, 90 L. Ed. 181 (1945); United States v. Lehigh Valley R. R., 220 U.S. 257, 259, 31 S. Ct. 387, 55 L. Ed. 458 (1911);
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> Kavanaugh v. Ford Motor Co., 353 F.2d 710, 717 (7th Cir. 1965); Joseph A. Kaplan & Sons, Inc. v. F. T. C., 21 U.S. App. D.C. l, 347 F.2d 785, 787 n. 4 (1965). See also 1 W. Fletcher Cyclopedia of the Law of Private Corporations 45 (1963). In Corn Products Refining Company v. Benson, 232 F.2d 554, 565 (C.A. 2), the Court similarly pierced the corporate veil to prevent circumvention of a Federal regulatory program. The Court held {232 F.2d at 565):
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> The existence of a separate corporate entity should not be permitted to frustrate the purpose of a federal regulatory statute--"corporate entity may be disregarded when failure to do so would enable the corporate device to be used to circumvent a statute." Alabama Power Co. v. McNinch, 1937, 68 App. D.C. 132, 94 F.2d 601, 618. See, also, Electric Bond & Share Co. v. s. E. c., 1938, 303 U.S. 419, 440, 58 S. Ct. 678, 82 L. Ed. 936; Dickey v. N. L. R. B., 6 Cir, 1954, 217 F.2d 652, 653; United States v. Aycock-Lindsey Corp., 5 Cir, 1951, 187 F.2d 117, 118-119. Cited in 54 Agric. Dec. 26 (U.S.D.A.), 1995 WL 321502 **26

The Respondent raised the existence of a corporate entity in order to circumvent the payment of late fees at issue in this case. The corporate entity can be disregarded if failure to do so would circumvent a statute. In this matter, assuming arguendo that a corporate entity were the first purchaser, then the Respondent could frustrate the purposes of the Soybean Act and Order merely by identifying the corporate entity as the entity responsible for paying the late fees and thereby avoid the payment of late fees despite the fact the only individuals that are involved in J & M Farm, according to the Respondent's exhibits, are the Respondent and his son.

Sanctions

Complainant requests, pursuant to Section 1972 of the Act (7 U.S.C. § 6307(c)(1)(A) and (B)), that Respondent be ordered to cease and desist from (1) failing to pay assessments in a timely manner and (2) failing to file reports in a timely manner. The Complainant requests that the Respondent be directed to pay the late fees of $2,431.13 due as of April 14, 2015 (a fee of 2% on the amount of assessments he failed to pay in a timely manner).

The Complainant also requests that pursuant to Section 1972 of the Act that the Respondent be assessed a civil penalty of $5,000 based on the Respondent's refused for several years to pay the assessments he collected from soybean producers.

The United States Department of Agriculture's sanction policy is set forth in In re S.S. Farms Linn County, Inc. (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), aff 'd, 991 F.2d 803, 1993 WL 128889 (9th Cir.1993)(not to be cited as precedent under 9th Circuit Rule 36-3):

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along will all relevant circumstances, always giving appropriate weight to the recommendation of the administrative officials charged with the responsibility for achieving the congressional purpose.

In this case the documents establish that Respondent willfully refused to pay assessments he collected from producers in a timely manner. Respondent, during the time he had the assessments, had use of that money while denying the United Soybean Board the use of the funds for the purposes of promoting soybeans. Once the Respondent paid the assessments, he still refused to pay the 2% fee. The purpose of the 2% fee is to provide an incentive for first purchasers to pay the assessment in a timely manner. The 2% fee takes the financial incentive

away from first purchasers who collect assessments and then fail to remit the assessments to a qualified state soybean board because the 2% fee encourages first purchasers to avoid the fee by paying on time.

The Respondent, by paying late and then willfully refusing to pay the 2% fee, circumvented the deterrent impact of having a late fee to incentivize prompt payment of assessments from first purchasers.

The Respondent's violations were not limited to refusing to pay the 2% fee on assessments he willfully refused to pay on time. The evidence of record supports a finding that the Respondent failed to file mandatory reports six times between 2011 and 2013. The purpose of the reports is to allow the United Soybean Board to determine the amount of assessments that a first purchaser must pay and when the payment should be made. The Respondent, by refusing to file mandatory reports, undermines the ability of the United Soybean Board to collect assessments that it utilizes to fund programs to promote soybeans and for research on soybeans for the benefit of soybean producers, consumers and handlers.

Accordingly, the sanctions requested by the Complainant are fully supported and are hereby **GRANTED**.

Findings of Fact and Conclusions of Law

The following findings of fact and law are fully supported by the record and are hereby adopted:

1. Respondent John R. Shoup is an individual whose business is located at 1262 Railroad St., Reinbeck, Iowa 50669-9863.
2. Respondent at all times material was the first purchaser as the term is defined in the Order of soybeans from a producer.

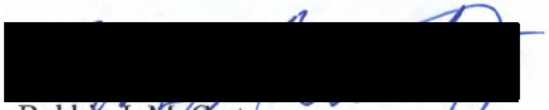
3. Respondent from November 1, 2009 through October 30, 2014 failed to pay a 2% fee on assessments that he collected from soybean producers and then paid late to the Iowa Soybean Association. The total amount that the Respondent must pay to the Iowa Soybean Association totaled $2,431.13 as of April 14, 2015. A check or money order made out to the Iowa Soybean Association to pay the 2% fee must be paid within 30 days of the effective date of this order.
4. Respondent shall cease and desist from (1) failing to pay assessments in a timely manner and (2) failing to file reports in a timely manner.
5. Respondent is hereby assessed a civil penalty of $5,000 payable to the Treasurer of the United States. The check or money order to pay the $5,000 civil penalty shall have written on it "Docket No. 15-0018"

Order

This Order as set forth in the findings of fact and conclusions of law adopted herein above shall take effect on the day that this Decision becomes final. Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Copies of this Decision and Order shall be served upon parties.

Done at Washington, D.C.
this 2nd day of December, 2016



Bobbie J. McCartney
Chief Administrative Law Judge