

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) FCIA Docket No. 06-0003
)
Ken Pierce,)
)
Respondent) **Decision and Order**

This is a proceeding brought against Ken Pierce under the Federal Crop Insurance Act (7 U.S.C. §§ 1501- 1524; the Act), for the imposition of a civil fine and a fixed period of disqualification from receiving any benefit provided to producers of agricultural commodities under statutes listed in the Act. The Manager of the Federal Crop Insurance Corporation (FCIC) initiated this proceeding by filing a complaint on April 10, 2006, that alleged Ken Pierce provided false information regarding his interest in 60 acres of land to receive an indemnity payment of \$1,824 as a participant in the federal crop insurance program for the 2003 crop year. On July 13, 2006, an answer and request for hearing was filed on behalf of Mr. Pierce by Gerald Edenfield, Esq. and Ben Edwards, Esq. who both later withdrew as his counsel. Pursuant to telephone conferences that ordered the parties to exchange exhibits and lists of witnesses, a transcribed oral hearing was held in Savannah, Georgia on October 25, 2006. Mr. Pierce elected to represent himself *pro se* at the hearing. FCIC was represented by Donald A. Brittenham, Jr., Esq. At the conclusion of the hearing, both parties requested that I render a bench decision. I advised the parties that I would instead prepare and issue a short written decision the following week.

The evidence at the hearing proved that Mr. Pierce willfully and intentionally made false certifications to obtain an indemnity payment that he was not entitled to receive. For that reason, pursuant to 7 U.S.C. § 1515(h), I am entering an order against him imposing a civil fine of \$3,000, and disqualifying him as a producer for a period of one (1) year from receiving any monetary or nonmonetary benefit provided under each of the statutes listed in that section of the Act. The civil fine of \$3,000 is the amount requested by the Complainant and is consistent with the gravity of the violation by Mr. Pierce. I have further determined that the sanction of disqualification is also appropriate and necessary in light of the violation's gravity and to deter future violations. But the testimony given at the hearing has convinced me that Mr. Pierce is customarily law abiding, and that a one year disqualification, rather than the five year disqualification requested by complainant, should be sufficient to deter him from making statements that are not completely truthful when he applies in the future for government benefits.

Findings of Fact

1. Stuart Boykin had leased 60 acres of land, FSN 2902, from Robert Lee and in the fall of 2002, planted wheat on it for harvest in the 2003 crop year. The seed was bad and even after applying fertilizer, the wheat would not grow. Sometime before December 31, 2002, Mr. Boykin had a conversation with Ken Pierce about his problem with the wheat. Mr. Pierce suggested that inasmuch as he was an existing participant in the federal crop insurance program and did not himself have any wheat under his control for the 2003 crop year, he could have the wheat Mr. Boykin was farming insured and then make a claim under the policy for the losses Mr. Boykin was likely to incur. Mr.

Boykin told Mr. Pierce that he would neither sign anything allowing Mr. Pierce to insure the wheat nor do anything unethical.

2. On December 30, 2002, Ken Pierce applied with an FCIC approved insurance provider, Rain and Hail LLC, to obtain Multiple Peril Crop Insurance for the 60 acres of wheat planted on FSN 2902. In his application, Mr. Pierce certified that he had planted the wheat and had a 100% interest in it when in fact it had been planted by Stuart Boykin who then owned the 100% interest in it.

3. On February 13, 2003, Ken Pierce submitted an acreage report to the Farm Service Agency of the United States Department of Agriculture in which he again claimed 100% interest in the 60 acres of wheat planted on FSN 2902.

4. On June 23, 2003, Ken Pierce signed a production worksheet/proof of loss form and certified he had harvested wheat from 60 acres on FSN 2902 and that he had 100% interest in the crop. In fact, Stuart Boykin had by that time decided not to harvest the wheat he had planted on FSN 2902, and abandoned it to Robert Lee, the farm's owner. Mr. Lee destroyed 25 acres of the planted wheat in May 2003, by turning it over and planting peanuts in its place. Rain in May 2003, kept Mr. Lee from harvesting the remaining wheat before it sprouted.

5. As the result of his crop insurance claim, Ken Pierce received an indemnity payment of \$1,824 for the wheat planted on FSN 2902. He later returned this payment when requested by Rain and Hail LLC.

Conclusions

1. Ken Pierce willfully and intentionally provided false and inaccurate information to the Federal Crop Insurance Corporation and to an approved insurance provider with respect to a crop insurance policy.
2. The gravity of his violation warrants the imposition of sanctions pursuant to 7 U.S.C. § 1515(h) as set forth in the following Order.

Order

1. Ken Pierce is assessed a civil fine in the amount of \$3,000, which shall be paid by certified check or money order made payable to the Federal Crop Insurance Corporation that, in accordance with 7 U.S.C. § 1515(h)(6), shall be deposited into the insurance fund established under 7 U.S.C. § 1516(c), and which shall be sent to counsel for complainant at the following address:

Donald A. Brittenham, Jr
United States Department of Agriculture
Office of the General Counsel
Room 4338, South Building
Washington, D.C. 20250

2. Ken Pierce is disqualified for a period of one year from receiving any monetary or nonmonetary benefit provided under each of the statutes listed in 7 U.S.C. § 1515(h)(3)(B).

The provisions of this Order shall become effective on the first day after this decision becomes final. Unless appealed to the Judicial Officer within 30 days after receiving service of this Decision and Order as authorized by 7 C.F.R. § 1.145(a), this decision shall become final without further proceedings as provided by 7 C.F.R. § 1.142(c), 35 days after service upon the respondent, Ken Pierce.

The Hearing Clerk shall serve copies of this decision upon the parties.

Done at Washington, D.C.
this 1st day of November, 2006

Victor W. Palmer
Victor W. Palmer
Administrative Law Judge