

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

FCIA Docket No. 08-0181

In re: BLUE RIDGE SEED, LLC,

Respondent

DEFAULT DECISION AND ORDER

This proceeding was instituted under the Federal Crop Insurance Act (7 U.S.C. §§ 1515(h)(Act)), by a complaint filed by the Manager of the Federal Crop Insurance Corporation (FCIC) on September 4, 2008 seeking the disqualification of the Respondent from receiving any benefit under the statutes specified in 7 U.S.C. § 1515(h)(3)(B) of the Act.

The complaint alleged that the Respondent willfully and intentionally provided false or inaccurate information to an approved insurance provider and FCIC concerning the planting date of its 2005 potato crop and that the Respondent knew or should have known that the information he provided was false.

On September 5, 2008, the Hearing Clerk's Office mailed a copy of the complaint to respondent by certified mail. Attempts by the Hearing Clerk's Office to serve Respondent were unsuccessful as the certified mail was returned for reasons other than "unclaimed" or "refused." Notwithstanding the failure to effect proper service of the Complaint, on November 12, 2008, the Complainant filed a Motion to Enter a Default Decision. On September 15, 2008, the Hearing Clerk's Office entered a Notice that efforts to serve the Complaint and Hearing Clerk's letter had been unsuccessful.

On January 15, 2009, Complainant filed the Declaration of Norma Ferguson, a Paralegal

Specialist employed by the Appeals and Legal Liaison Staff of the Federal Crop Insurance Corporation/Risk Management Agency which was accompanied by a number of enclosures. Her Declaration indicated that Daniel Smith was the owner and operator of the Respondent corporation and noted that he had been served in another action pending before the Secretary. (*In re: Daniel Smith, d/b/a Blue Ridge Farms*).

On January 22, 2009, the Administrative Law Judge entered an Order finding that service of a Complaint in an action other than the one at issue was insufficient and directed that the Complainant personally serve the Respondent. On March 21, 2009 at 6:38 PM, a copy of the Complaint was served upon Daniel Smith at his residence in Burbank, Washington by Dave Paul, USDA/Risk Management Office, Spokane Valley, Washington.

The Complainant renewed its Motion to Enter a Default Decision on May 18, 2009. After unsuccessful attempts at service of the Motion by mail, the Respondent was personally served with a copy of the Motion and the Proposed Decision by Dave Paul on June 19, 2009 at 7:07AM.

The Respondent had been informed in the Complaint that an Answer should be filed with the Hearing Clerk's Office within twenty (20) days after service of the complaint. As the Respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a), Section 1.136(c) of the Rules of Practice provides 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. 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 are adopted and set forth in this Default Decision as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Blue Ridge Seed, LLC is a Washington state corporation, owned and operated by Daniel Smith.
2. The Respondent was a participant in the Federal Crop Insurance program under the Act and the regulations for the 2005 crop year.
3. On June 29, 2005, Daniel Smith signed a Multiple Peril Crop Insurance Application and Reporting Form on behalf of the Respondent, certifying that the Respondent had planted a total of approximately 169.2 acres of potatoes on dates between May 31, 2005 and June 1, 2005 on land described in the application and further certified that the information and answers on the application were true and correct, that none of the reasons for rejection were applicable. He also reported that Brandon Rattray had a 50% interest in the crop.
4. The final date for planting potatoes in Union County, Oregon where the crop was located was May 31, 2005.
5. Based upon the information contained on the application and reporting form, Rain and Hail, LLC, the managing general agent for Ace Property and Casualty Company, an approved insurance provider described in 7 U.S.C. § 1515(h) and 1502(b)(2) of the Act provided crop insurance coverage for the Respondent's potato crop under policy number 615021 which was reinsured by FCIC in accordance with the Act.
6. The Respondent's policy was subsequently voided for misrepresentation or fraud by the approved insurance provider because evidence from reliable sources indicated that the planting had occurred at a much later date than reported and it appeared that the planting date had been intentionally misreported.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. The Respondent willfully and intentionally provided false or inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the Federal Crop Insurance Act (Act) (7 U.S.C. § 1515(h)).

Order

1. Pursuant to section 1515(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), Respondent is disqualified from receiving any monetary or nonmonetary benefit provided under each of the following for a period of two years:

- (1) Subtitle A of the Federal Crop Insurance Act (7 U.S.C. §§ 1501-1524);
- (2) 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);
- (3) The Agricultural Act of 1949 (7 U.S.C. §§ 1421 et seq.);
- (4) The Commodity Credit Corporation Charter Act (15 U.S.C. §§ 714 et seq.);
- (5) The Agricultural Adjustment Act of 1938 (7 U.S.C. §§ 1281 et seq.);
- (6) Title XII of the Food Security Act of 1985 (16 U.S.C. §§ 3801 et seq.);
- (7) The Consolidated Farm and Rural Development Act (7 U.S.C. §§ 1921 et seq.); and
- (8) 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 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 entity, 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 and entities who are determined ineligible in its Excluded Parties List System (EPLS).

3. A civil fine of \$1,000 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:

Federal Crop Insurance Corporation
Attn: Kathy Santora, Collection Examiner
Fiscal Operations Branch
6501 Beacon Road, Room 271
Kansas City, Missouri 64133

This order shall be effective 35 days after this decision is served upon the Respondent unless appealed to the Judicial Officer pursuant to 7 C.F.R. §1.145.

Done at Washington, D.C.
July 17, 2009

PETER M. DAVENPORT
Administrative Law Judge