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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 15-0043 FCIA

In re:

STEVE LANE,

Respondent.

DECISION AND ORDER

This is a proceeding under section 515(h) of the Federal Crop Insurance Act (Act), (7 U.S.C. § 1515 et seq.), alleging violations of the Act by Steve Lane (Respondent), as provided under section 1515(h)(3)(A) and (B). On December 11, 2014, the Manager of the Federal Crop Insurance Corporation (FCIC; Complainant) filed a complaint against Respondent pursuant to section 515(h) of the Act (7 U.S.C. § 1515(h)(3)(A) and (B)), the regulations published at 7 C.F.R. part 400, subpart R, and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under the Various Statutes (7 C.F.R. part 1,subpart H). The record in this matter is now closed and the matter is ripe for the instant Decision and Order.[1] In reaching my conclusions, I have considered all documentary and testamentary evidence and the arguments of the parties.

I. ISSUES

1. Whether Respondent willfully and intentionally provided false or inaccurate information with respect to a policy or plan of insurance to FCIC or any approved insurance provider, or failed to comply with a requirement of FCIC.

[1] In this Decision and Order, Complainant's exhibits shall be identified as "CX-#" and Respondent's exhibits shall be identified as "RX-#". References to the transcript of the hearing shall be denoted as "Tr. at [page #]".

II. PROCEDURAL HISTORY

Complainant filed its complaint against Respondent on December 11, 2014. The complaint alleges that Respondent collected proceeds for losses that he did not incur and seeks the assessment of a civil fine against Respondent and his disqualification from the program. On December 30, 2014, Respondent filed an answer denying the allegations. Counsel for Respondent entered their appearance on January 6, 2015. By Order issued February 5, 2015, I set deadlines for the exchange of evidence and filing of lists of exhibits and witnesses. On March 30, 2015, Complainant filed the required lists and on May 7, 2015, Respondent filed its lists.

By Order issued May 27, 2015, I set the date for commencement of a hearing in the matter in Savannah, Georgia. The hearing commenced as scheduled on June 23, 2015, and continued through June 24, 2015. At the hearing, I admitted to the record Complainant's exhibits CX-1 through CX-23 and Respondent's exhibits RX-1 through RX-36.

On September 25, 2015, Respondent moved to admit post-hearing evidence into the record and requested an extension of time to file post-hearing argument. Complainant requested additional time to address the motion, which I granted by Order issued September 25, 2015. By Order issued October 26, 2015, I granted Respondent's motion over Complainant's objection filed October 22, 2015, and admitted the evidence to the record. I hereby identify the evidence as RX-37. I set new deadlines for the filing of the parties' written closing argument.

Respondent filed closing argument on December 9, 2015.[2] Complainant filed its closing argument on December 11, 2015. Neither party moved for permission to file sur-reply to opposing closing argument, but on January 8, 2016, Respondent filed a sur-reply. On January 11, 2016, Complainant filed a response to Respondent's submission.

[2] Respondent filed its closing argument first by facsimile, then by email, and then by post.

III. STATEMENT OF THE CASE

1. Summary of the Evidence

Respondent Steve Lane grew up on a farm in Georgia and continued farming his family farm as an adult. Tr. at 292-295. When Mr. Lane began farming on his own he purchased crop insurance through his agent Chris Webb, and continues to use Mr. Webb's services. Tr. at 295; RX-14, RX-15, RX-18. Respondent relies on his agent to fill out forms and he provides the agent with information requested by USDA. Tr. at 295-296.

In 2006, Respondent grew a good crop of tobacco, but decided not to sell it all because the price was not good for the color of his crop. Tr. at 296-297. He did not make a crop insurance claim, but stored the tobacco, intending to sell it when prices rose. Tr. at 297. It was the first time Mr. Lane had carried over tobacco. Tr. at 308-309. The market for his tobacco did not improve in 2007 or 2008. Tr. at 298-307. In 2009, Mr. Lane decided to sell the tobacco regardless of price because it risked going bad in storage. Tr. at 308.

Mr. Lane described the process of planting in the spring, then harvesting by hand and machine and curing tobacco in his barns. Tr. at 299-301. The tobacco is then baled and taken for grading. Tr. at 302. His crop in 2006 was irrigated. Tr. at 310-311. Mr. Lane keeps records of bales of tobacco by barn number on "slip sheets", which are attached to bales; he documents the barn and the bale on his own records. Tr. at 303.

Mr. Lane was aware that he needed to give his agent Mr. Webb all of his sales receipts, and he did so; however, he was not aware that he needed to report his stored crop from 2006. Tr. at 308-309; 311. Mr. Lane believed that because he met his production in 2006 and did not make a crop insurance claim, the tobacco that he stored was entirely his own business. Tr. at 309-310.

His failure to report the crop did not impact anything, and he explained that a certain kind of insurance made it optional to sell or store his crop. Tr. at 310-311.

In 2009, Mr. Lane grew tobacco on his own irrigated parcel and on non-irrigated acreage that he leased. Tr. at 313. He recalled that when the weather started to turn dry in June, he became concerned that his non-irrigated crop would not reach maturity and he reported a potential loss to his insurance agent. Tr. at 314. Mr. Lane acknowledged a notice of loss from wind damage, but he did not recall any specifics about wind damage. Tr. at 315-316; C.X-10. He also filed a notice of loss from drought for the crop on the non-irrigated land. Tr. at 317; CX-11. Mr. Lane did not remember if an agent or adjustor came to look at the crop, but he acknowledged documents dated August 12, 2009, which reflect an inspection of his crop. Tr. at 318-319; CX-12.

Because of the lack of rain early in the growing season, much of the tobacco did not ripen. Tr. at 319. Mr. Lane harvested what he could, cured it in his barn and then sold it along with the irrigated tobacco to the Stabilization Cooperative in Nashville. Tr. at 320-321. Respondent's guarantee on the dry land crop was 66,440 pounds and he produced only 13,309 pounds because he did not harvest the unripened crop. Tr. at 340-341. No one came to look at his crop at harvest time. Tr. at 341. Ned Day came when he filed his notice of claim, but Respondent did not think he needed to file another notice after the harvest showed his actual losses. Tr. at 342. He did not inform anyone in the government about his loss, but followed the instructions he had been following for years and reported his production. Tr. at 342-345.

In 2009, Respondent tried to sell his carryover tobacco from 2006 to his usual buyer, but they refused it because it was dark. Tr. at 322. He sold carryover tobacco from 2006 to Mr. Boyett at Blackshear. Tr. at 322-325; 362. He did not report the sale of the 2006 tobacco on his claim for loss on the 2009 crop because Mr. Lane did not think it was relevant. Tr. at 326-327.

Mr. Lane could not specifically remember selling "trash" tobacco in 2009, but he verified that he usually picked burnt and other less developed leaves throughout the season and bundled it together to be sold separately at the end of the season. Tr. at 389. He did not consider the carryover tobacco to be in the same category. Tr. at 390.

Respondent recalled being interviewed by RMA investigator Randy Upton, and he recalled signing a written statement, but he did not really focus on the interview, as he was anxious to get to work hauling peanuts. Tr. at 327-328.

Christopher Webb has been Mr. Lane's crop insurance agent for some time, and he has renewed Respondent's policies and prepared reports for him. Tr. at 29-30. A farmer's coverage is based in part upon his previous year's production, which Mr. Lane reported on an annual form. Tr. at 30; CX-7. Mr. Webb also prepared an acreage report that documents what Mr. Lane planted each year. Tr. at 31; CX-8. Mr. Webb prepared these reports for Mr. Lane in 2006, 2007, 2008 and 2009, and Mr. Lane did not report carryover crop, as he should have. Tr. at 32. The form does not include a special place to report carryover tobacco, but Mr. Webb would have documented it in the remarks section of the form. Tr. at 34.

On August 7, 2009, Mr. Webb signed a notice of loss on Mr. Lane's tobacco crop due to wind on his usual company form. Tr. at 33-37; CX-10. Mr. Webb was not familiar with the notice of loss form identifying loss due to drought, and testified that he had not prepared it. Tr. at 37; CX-11. He first saw the form when contacted by counsel for the government. Tr. at 43. Mr. Webb stated that he always prints the information, unlike the writing on the drought notice, and further, information that he would normally include was omitted on that notice. Tr. at 38-40. Another inconsistency he observed was that the drought notice includes a claim number, which is assigned by the company after Mr. Webb submits the notice of loss... Tr. at 40.

Mr. Webb further testified that it was irregular to issue a notice of loss on August 7, 2009, that identified a loss in the future, in September, 2009. Tr. at 42. Mr. Webb explained that he would not have looked too closely at notices, because it is the adjustor's job to handle the claims. Tr. at 42-43. Mr. Webb did not know if an adjustor would ever prepare a notice of loss, but it was normal procedure for an agent like himself to prepare such notices. Tr. at 56-57. Mr. Webb was aware that an audit of Respondent's tobacco production had been conducted and Mr. Lane had not reported any carryover tobacco. Tr. at 44.

Ned Day is a retired insurance loss adjustor, who adjusted Respondent's crop insurance claims in 2009. Tr. at 68-70. Mr. Day recalled conducting a pre-harvest inspection of Respondent's tobacco crop in August, 2009, and then receiving a notice of loss from Respondent's insurer in November or December, 2009. Tr. at 70-71. Mr. Day did not recall seeing a notice of loss for wind damage in 2009. Tr. at 71-72. Mr. Lane was with Mr. Day when the adjuster prepared a pre-harvest inspection field review. Tr. at 73; CX-12. The report included information about Respondent's crops and guaranteed acreage and a schedule of insurance. Tr. at 74. If a farmer produces less than the guaranteed production, then he would receive an indemnity. Tr. at 75.

Mr. Day explained how he appraised Respondent's anticipated production, and emphasized that the appraisal was approximate, based on the condition of the crop at the time of the appraisal. Tr. at75-77. At that time, both irrigated and non-irrigated crops looked to be good quality, although the non-irrigated may have had thinner leaves. Tr. at 78. The tobacco was mature, and Mr. Day saw no evidence of wind damage or damage due to drought. Tr. at 78-79.

Respondent provided Mr. Day with information regarding his production in 2009 that showed he had a loss. Tr. at 82-83. Mr. Day asked Mr. Lane if he sold tobacco that was not

included in the report, and Mr. Lane advised that he was unable to sell it. Tr. at 84. Mr. Lane should have reported that tobacco so that the insurance company could have adjusted the claim in consideration of the unsold crop. Tr. at 84.

Mr. Day explained that the form that showed a "claim number" actually showed Mr. Lane's insurance identification number. Tr. at 96. His figures were based upon a sample of plants along a sample of rows. Tr. at 100-104. Mr. Day had never had an appraisal miss as much as the one he conducted of Respondent's 2009 tobacco crop. Tr. at 110. He acknowledged that the production number looked suspicious. Tr. at 111.

Randy Upton is a special investigator for the Risk Management Agency (RMA) for USDA. Tr. at 113. Mr. Upton conducted an investigation into Georgia tobacco producers, including Respondent, which spanned several years. Tr. at 113-115. Mr. Upton reviewed Respondent's 2009 notices of claim, appraisal and production documents, and concluded that Respondent's production should have been greater than he reported. Tr. at 115. Mr. Upton interviewed Mr. Lane in the presence of a tobacco expert and recorded and made a written record of the interview. Tr. at 116; CX-18; CX-19. Mr. Lane denied selling tobacco to Independent Tobacco Service (ITS) and said that he only sold to Stabilization in 2009. Tr. at 117. When confronted with documentation of the sale of 26,000 pounds of tobacco to ITS, Respondent speculated that the sale represented trash tobacco. Tr. at 117.

Mr. Upton testified that Respondent's guarantee on the irrigated acreage was 71,100 pounds and he had reported actual production of 101,000 pounds, which was approximately 30,000 pounds above the guarantee. Mr. Upton suspected that there could have been shifting of production since Respondent reported producing only 309 pounds per acre on the other lot versus the 2,007 pounds that was estimated by the loss adjuster. Tr. at 116-130; CX-18. The

photographs of Respondent's crop suggested that it was healthy, and Mr. Upton could not conceive of an explanation for the shortage of tobacco claimed by Respondent. Tr. at 124. Mr. Upton believed that the tobacco that Respondent sold to ITS consisted of tobacco that he did not account for from the non-irrigated acreage and not carry over tobacco. Tr. at 125; CX-15. Respondent had not reported carry over tobacco, although his policy required him to do so. Tr. at 129; CX-6.

Mr. Upton concluded that Respondent had misrepresented losses, and GAIC followed his recommendation to void Respondent's crop insurance policy. Tr. at 130. During Mr. Upton's interview with Respondent, Mr. Lane mentioned having carry over tobacco that Mr. Upton believed to be the same as "trash tobacco". Tr. at 135. Mr. Upton agreed that from the price Respondent was paid that the tobacco was "trash", and he also admitted that he had no idea where the tobacco came from, or when it was grown. Tr. at 157-158. Mr. Lane participated in the interview for two hours, and did not express his need to leave to work on the peanut harvest. Tr. at 137. Mr. Upton researched the weather in Respondent's area during the summer of 2009 and did not find reports of drought conditions. Tr. at 136.

Mr. Upton was not convinced that Respondent sold all of his 2009 tobacco to Stabilization because he had not reported carry over tobacco in 2006 or thereafter, and " he had only produced 300 pounds per acre when he was supposed to have produced the 2,007 pounds per acre" on the non-irrigated acreage. Tr. at 159. Mr. Upton also concluded that insurance adjustor Ned Day misrepresented that there was a loss from drought, and that contrary to Mr. Day's assertions, Mr. Day prepared the package showing the loss. Tr. at 172. The number of pounds that Respondent produced on the irrigated land in 2009 exceeded his guarantee almost at a level equivalent to the loss Respondent reported on the dry land crop, and Mr. Upton suspected shifting of the crop. Tr.

at 178-181. RMA concluded that Respondent had misrepresented material and relevant facts pertaining to the acreage report, notice of loss, and production worksheet associated with policy and as a result, GAIG voided Respondent's 2009 tobacco policy and issued a notice of premium overstatement of $20,664 and indemnity overpayment of $104,429. CX-23.

Joseph Boyett has been a farmer all of his life, and he grew tobacco and ran a tobacco warehouse in Blackshear, Big Z Planters, from 1976 to 2006. Tr. at 216-217. He also bought tobacco for ITS. Tr. at 217. In 2009, Mr. Boyett bought a lot of low grade tobacco that he sold for .40 or .50 cents a pound to "Tobacco Rag". Tr. at 217-218. He testified that "trash tobacco" came from a variety of sources, such as poorly cured tobacco, poorly grown tobacco, or tobacco that could not be graded for sale to usual buyers. Tr. at 218; 223. Since 2009, most independent dealers have bought trash tobacco for sale to foreign markets. Tr. at 218-219.

Mr. Boyett had not met Respondent before he sold trash tobacco to ITS in 2009, but he confirmed that invoices showed the sales. Tr. at 219-222; CX-13; RX-20. He explained that if growing conditions were unfavorable, an entire field could produce a crop of trash tobacco, but that the invoices of Respondent's sales did not amount to 40 acres of tobacco. Tr. at 224-226. Mr. Boyett was familiar with carry over tobacco, but he believed that a crop of trash tobacco carried over for years would not be worth anything. Tr. at 226-227.

Mr. Boyett did not categorize dark tobacco as trash, and asserted that it sometimes was desirable, as it could be sweeter and higher in nicotine. Tr. at 224. He explained that most American companies prefer lighter tobacco, and they purchase different colored tobacco to accommodate the market. Tr. at 230-231. Mr. Boyett testified that lack of moisture during the growing season could create a crop that is green. Tr. at 233-234.

Allen Denton grew up on a farm, and worked with his family's tobacco crop from the age of ten until after high school. Tr. at 236. After two years of military service, Mr. Denton returned to farming in 1974, and then worked first as an adjustor and then as a field representative with RMA's crop insurance program. Tr. at 236-237. In 1987, he was employed by the Farm Service Agency of USDA as the chief compliance officer and field reporter. Tr. at 237. He supervised adjustors, appraised tobacco crops, and adjusted loss claims. Tr. at 238. In 2014, Mr. Denton retired from his job of twelve years as a compliance investigator with RMA. Tr. at 235-236. In that position, he reviewed claims for compliance with RMA's policy and regulations, and made determinations regarding possible fraud and reduction in indemnity payouts. Tr. at 238.

Mr. Denton carried crop insurance during his years farming and recalled filing one loss claim due to hail. Tr. at 238-239. He never experienced drought. Tr. at 239. Mr. Denton described the typical tobacco growing and harvesting process. Tr. at 239-242; 247-249. He testified that based upon the date that Respondent planted his non-irrigated tobacco and the date on which a picture of the crop was taken, the tobacco was mature and ready to be harvested. Tr. at 243-247. Tr. at 243-247; CX-13, at 17. If the crop is left in the field and not harvested at the proper time, it would cause the crop to deteriorate and result in reduced production. Tr. at 249-250. Mr. Denton believed that only a catastrophic event would have prevented Respondent's crop from producing 2,000 pounds per acre, as appraised on August 12th, 2009. Tr. at 250-251. Mr. Denton further asserted that in 2009, it would be uncommon to have carry-over tobacco crop. Tr. at 252.

Mr. Denton assisted Mr. Upton in his investigation into Respondent's claim of loss. Tr. at 258-260. The investigation concluded "[t]hat the tobacco was planted timely. That there was no damage to the tobacco that the adjuster could determine based on his appraisal and the pictures that he took. And that Mr. Day also said himself in the interview that the tobacco was a very

good crop and he could not understand why there would have been a loss". Tr. at 269-270. Mr. Denton and Mr. Upton speculated that the tobacco that Respondent reported as a loss was sold somewhere else and not reported. Tr. at 270. He was aware that Respondent had sold tobacco to ITS. Tr. at 271.

Dan Johnson testified that he has been a farmer all his life and has farmed in Emanuel and Bullock counties. Tr. at 450-451. Mr. Johnson suffered a loss of his corn crop from drought in 2009 and filed a crop insurance claim for the loss. Tr. at 451-452; 453; RX-8, RX-9. He estimated that the field that suffered the loss was a mile to a mile and one half from Respondent's dry planted field. Tr. at 452. Mr. Johnson could not recall receiving a payment because it would have been credited against his next year's premium. Tr. at 453-454.

John Paul Johnson has also farmed all his life in many areas, including Emanuel and Bullock counties. Tr. at 462. Mr. Johnson also filed a claim for loss on his corn crop in 2009 due to drought. Tr. at 463; RX-16. He believed he was paid an indemnity but did not know how much. Tr. at 465.

Bobby Lane has farmed all his life and in 2009 filed an insurance claim for loss on a crop[3] grown in Emmanuel County due to drought. Tr. at 470-472; RX-7. He did not recall the amount he was paid for his loss and documents that he reviewed did not note the amount. Tr. at 475-476.

Burt Rocker testified that he was at Respondent's farm sometime in the summer of 2007 and observed that Respondent's barns were full of tobacco. Tr. at 479; 482; RX-12. Mr. Rocker was fishing in Respondent's ponds near his barns and noticed the tobacco because it would not normally still be in barns at that time of the year. Tr. at 480-482. Respondent leases 40 acres of land from Mr. Rocker. Tr. at 481. Respondent told Mr. Rocker that the tobacco was from the

[3] On RX-7, it appears as though the crop that suffered damage was peanuts.

previous year. Tr. at 483. Mr. Rocker could not say he looked at all of Respondent's barns, but the barns with open doors were filled with tobacco. Tr. at 487.

Dr. Ricky Lane is a dentist and Respondent's brother. Tr. at 492-493. Dr. Lane grew up on the family farm and returns frequently to visit. Tr. at 493. Dr. Lane recalled seeing tobacco in a warehouse on the farm in the winter months of 2007 and 2008 and thinking it was odd to see tobacco stored at that time of the year. Tr. at 493-494. Dr. Lane completed an affidavit documenting his observations of the stored tobacco at the request of his brother, but he could not say when he was asked to do so. Tr. at 495-496; RX-11; CX-*. Dr. Lane visited the warehouse frequently on Fridays until May, 2008, after returning from meetings with his lawyer because he found the warehouse a soothing place to rest. Tr. at 496-497.

Dr. Lane recalled teasing his brother about not needing the money from the sale of the stored tobacco, but he did not recall the conversation as he was focused on his own personal problems. Tr. at 499-500. Although he could not say how much tobacco was present, Dr. Lane believed there were at least six to eight bales of it because he used to lean on it during his visits. Tr. at 501-502. The tobacco did not fill the warehouse. Tr. at 503.

Stephen Jeffrey Underwood has a Ph.D. from the University of Georgia in the study of applied climatology, synoptic meteorology, and fluvial geomorphology. Tr. at 510. Dr. Underwood currently is a department chair at Georgia Southern University in the Department of Geology and Geography, and also teaches a course in weather and climate. Tr. at 506-507. Before holding that position, Dr. Underwood was the Nevada State Climatologist for seven years, and was responsible for chairing the Governor's Drought Review and Reporting Committee, which determined when drought conditions were present. Tr. at 507-509. Dr. Underwood has served on committees studying climate change, has consulted with parties on

climate matters, and authored many publications about weather and climate. Tr. at 511; RX-36. Dr. Underwood testified as an expert witness for Respondent.

In preparing for his testimony, Dr. Underwood reviewed data from the Georgia Automated Environmental Monitoring Network, which the USDA National Agricultural Statistics Service uses for its analysis of metrological conditions in Georgia. Tr. at 515-516. The network uses automated stations that collect photographs north, south, east and west of the position of equipment and provides written information about the specific equipment. Tr. at 516-517. Dr. Underwood is familiar with the equipment, Campbell Scientific instrumentation, and considers it "state of the art". Tr. at 517.

In his review, Dr. Underwood focused on stations in Statesboro and Midville, as they were closest to Respondent's farm. Tr. at 517. He looked at daily records of weather from April through September, 2009. Tr. at 518-519; RX-26; RX-29. The data from the Midville station showed that April and May were wetter than normal, June and July were drier than normal and August and September were normal or slightly above normal for precipitation. Tr. at 521-522; RX-26. The data from the Statesboro system from that period showed that April and May were more wet than normal, and that June and July were drier than normal. Tr. at 522-523; RX-29. Dr. Underwood explained that in the field of climatology, averages are based on data accumulated over thirty years. Tr. at 523.

Dr. Underwood did not analyze the data from August and September as carefully as the data from earlier months. Tr. at 533. He stated that his "cursory analysis [he] did not think there would be drought conditions in those two months". Tr. at 533.

Dr. Underwood also reviewed data stored at the National Climatic Data Center (NCDC) in Asheville, North Carolina, which archives all climatic data collected by multiple agencies such

as the National Oceanic and Atmospheric Administration, and the National Weather Service. Tr. at 527-528. The data from NCDC for the period from June to August 2009 ranked Georgia as a "6" for precipitation, on a scale of "1" being driest and "115" being wettest, based upon data collected over 115 years. Tr. at 529-530. The data showed that the period from June through August was the 6th driest recorded over the 115-year record here. Tr. at 531.

Wesley Harris has a degree in agricultural engineering and served as the County Extension Director in Burke and Bulloch counties and as a policy analyst and educator for the Center for Agribusiness Economic Development. Tr. at 534-536. He currently works with Bulloch Gin to support the customers of the Gin in cotton production, peanut production and various other commodities, and also acts as a consultant on all aspects of agriculture. Tr. at 538. .When he began his position as Extension Director in Bulloch County in 1993, he became familiar with tobacco producers and his role was to support them and their crop. Tr. at 537. Mr. Harris had no experience with Respondent when he served as Extension Director. Tr. at 538.

Mr. Harris reviewed records from the automated weather stations at Midville and at Statesboro, Georgia. Tr. at 539-540; RX-26; RX-29. The data maintained by the system was critical to his work in providing assistance to farmers. Tr. at 540.

Mr. Harris visited Respondent's farm the week before the hearing and also visited the leased acreage where Respondent grew the unirrigated tobacco in 2009. Tr. at 541. He observed a healthy crop of peanuts planted in the field under conditions that led him to conclude that Respondent "was an accomplished producer". Tr. at 541. He also noticed that the west end of the field was more "pebbly", and that the field became sandier in elevated areas. Tr. at 541-542. Mr. Harris considered the soil compatible with growing tobacco, and explained that most Georgia

soil has limited water holding capacity, and without regular rainfall or supplemental irrigation, it is difficult to successfully produce a crop. Tr. at 542.

Mr. Harris examined the photograph of Respondent's tobacco crop taken on August 12, 2009, and confirmed that it depicted the field he had seen. Tr. at 542; RX-11. He described the typical processes involved in growing and cultivating tobacco, including how fields are generally watered. Tr. at 543-549. Mr. Harris opined that wet weather in the early part of the season would have "a deleterious effect" on the plants. Tr. at 549. He explained that dryland tobacco exposed to a combination of early wet conditions and a combination of heat and dry weather could fail. Tr. at 549. Mr. Harris believed that tobacco needs an inch and a quarter to an inch-and-a-half of water per week during hot conditions. Tr. at 550. Without sufficient water, the plant will not ripen, although it will create "a nice leaf". Tr. at 550-551.

Mr. Harris explained the ripening process and stated that "ripe tobacco normally is going to have a yellow, very yellow cast to it". Tr. at 551-552. He examined a photograph of tobacco in a field and concluded from its color and condition that it was ripe and" ready for harvest". Tr. at 552-553. In some instances, the crop doesn't ripen as much as a farmer would like, and the greener leaves would not cure as well and would be graded lower. Tr. at 553.Considering the weather data from the tobacco growing season of 2009, Mr. Harris concluded that "[i]t would have been an extremely challenging year. There's no way with the heavy impact of the saturated soils right after transplanting and then another shot right after that that we would have developed the root system to the point that we could sustain the type of dry hot weather that we had during the primary growth point of the season". Tr. at 554. He concluded that high temperatures and an extended period without significant rain would interfere with creating a successful crop. Tr. at 554-555. Mr. Harris viewed a photograph of Respondent's dry land tobacco and concluded that

the image depicted tobacco that was not maturing and ripening as it should have, based on its dark green color. Tr. at 555-556; CX-12. Mr. Harris was unable to say that the photograph of the tobacco grown with irrigated showed a riper crop than the non-irrigated crop, and admitted that it was difficult to determine the maturity of the crop from the picture. Tr. at 578-579; CX-12.

2. Statutory and Regulatory Authorities

The provisions of the Federal Crop Insurance Act (FCIA; the Act), 7 U.S.C. § 1515 et seq., and prevailing regulations found at 7 C.F.R. Part 400 apply to this case. The Act is designed to "promote the national welfare by improving the economic stability of agriculture through a sound system of crop insurance." 7 U.S.C. § 1502. The Crop Insurance program is operated by the Federal Crop Insurance Corporation (FCIC), a quasi-governmental entity, with some administration by the RMA, which imposes a number of conditions and restrictions governing eligibility for coverage. The Act limits the authority to insure crops to "producers of agricultural commodities grown in the United States," against losses from "drought, flood or other natural disaster." 7 U.S.C. § 1508(a)(1).

FCIC essentially operates the crop insurance program and RMA is responsible for authoring crop insurance handbooks, loss adjustment manuals and other materials. See, CX-1. The RMA implements a standard crop insurance contract, which sets a number of obligations and deadlines on behalf of the parties to the contract and specific to the crop covered by the insurance. CX-4; CX-5; RX-14, RX-15, RX-18..

USDA's Farm Service Agency (FSA) is also involved in the administration of the crop insurance program by demanding acreage reports and by maintaining records, including aerial photography to measure the amount of acreage farmers plant with various crops. FSA records may be resourced to determine crop insurance coverage.

The Common Crop Insurance Policy and the Crop Revenue Insurance Policy required for coverage under the Act mandate the types of coverage provided for crop insurance. The insurance policy is actually a contract between the producer (farmer) and the designated insurance company. The regulations set forth Definitions that establish the responsibility of participants in the crop insurance program to comply with requirements:

> Requirements of FCIC. Includes, but is not limited to, formal communications, such as a regulation, procedure, policy provision, reinsurance agreement, memorandum, bulletin, handbook, manual, finding, directive, or letter, signed or issued by a person authorized by FCIC to provide such communication on behalf of FCIC, that requires a particular participant or group of participants to take a specific action or to cease and desist from a taking a specific action (e-mails will not be considered formal communications although they may be used to transmit a formal communication). Formal communications that contain a remedy in such communication in the event of a violation of its terms and conditions will not be considered a requirement of FCIC unless such violation arises to the level where remedial action is appropriate. (For example, multiple violations of the same provision in separate policies or procedures or multiple violations of different provisions in the same policy or procedure.)

7 C.F.R. § 400.452

A violation of a program requirement is defined as "each act or omission by a person that satisfies all required elements for the imposition of a disqualification or a civil fine contained in § 400.454." 7 C.F.R. § 400.452. "Willful and intentional" acts include providing

> false or inaccurate information with the knowledge that the information is false or inaccurate at the time the information is provided; the failure to correct the false or inaccurate information when its nature becomes known to the person who made it; or to commit an act or omission with the knowledge that the act or omission is not in compliance with a "requirement of FCIC" at the time the act or omission occurred. No showing of malicious intent is necessary.

7 C.F.R. § 400.452. The definitions further provide that no proof of specific intent is required"[w]hen a person, with respect to a claim or statement [h]as actual knowledge that the claim or statement is false, fictitious, or fraudulent; [a]cts in deliberate ignorance

of the truth or falsity of the claim or statement; or [a]cts in reckless disregard of the truth or falsity of the claim or statement…

7 C.F.R. § 400.452 (Definitions)

The Regulations define a material violation of the Act as one "that causes or has the potential to cause a monetary loss to the crop insurance program or it adversely affects program integrity, including but not limited to potential harm to the program's reputation or allowing persons to be eligible for benefits they would not otherwise be entitled" . 7 C.F.R. § 400.452.

3. Discussion

In crop year 2009, the Great American Insurance Company (GAIC) was Respondent's approved insurance provider pursuant to the Act. See, 7 U.S.C. §§ 1515(h) and 1502(b)(2). GAIC provided coverage for Respondent's flue cured tobacco in Emanuel County, Georgia under policy number 973633, which was reinsured by FCIA. See, CX-5. Respondent's acreage of irrigated and non-irrigated tobacco was insured. CX-6. The gravamen of the instant matter is whether or not Respondent experienced loss of his non-irrigated tobacco crop due to drought in 2009, or whether he filed a false claim of loss.

On August 7, 2009, Respondent filed a notice of loss on tobacco due to a windstorm on August 5, 2009. CX-10. The notice was filed through his agent, Christopher Webb, who recalled preparing the document, and who signed it. Id. Another notice of loss dated August 7, 2009, predicted future loss due to drought. CX-11. I credit Mr. Webb's testimony that he had no knowledge of the notice of loss due to drought, and observe that the form was prepared in a manner different from the form that Mr. Webb recalled preparing. Mr. Webb prints all of the information he records, and does not use cursive, such as appears on the drought form. Tr. at 37;

CX-11. In addition, in 2009, Mr. Webb manually prepared forms, while his and Respondent's names and addresses on the notice of loss for drought were typed. Tr. at38-39; CX-11.

In contrast, Respondent had no clear memory about who prepared the notice of loss for drought, and the insurance adjuster who conducted the field inspection on August 12, 2009, Ned Day, recalled only that he received a notice of loss from Respondent's insurer in November or December, 2009. Tr. at 70-71. Mr. Day's testimony did little to bolster Respondent's very patchy memory, and the fact that Mr. Webb had no knowledge of the drought notice of loss makes it suspicious. Respondent testified that he relied "entirely" on Mr. Webb to fill out claims and other insurance related documents, and yet Respondent bypassed Mr. Webb in this instance. Tr. at 402. Moreover, the field review report prepared by Mr. Day on August 12, 2009, bears handwriting that is very similar to the writing on the notice of loss for drought. CX-12; CX-11. I find that the notice of loss for drought is not a reliable indicator of loss, as it was not handled in the usual manner, was not prepared by Respondent's agent, and represents a predicted rather than an actual loss.

The preponderance of the evidence supports the conclusion that Respondent did not suffer the loss that he reported. Respondent's testimony is problematic in many respects. His ability to recall the circumstances involved in selling tobacco in 2009 varied, just as it had when he was interviewed by Investigator. During that interview, Respondent denied selling tobacco to ITS until he was confronted with sale records. CX-18. He then speculated that the sale was of trash tobacco from his 2009 crop. CX-19. At a meeting in December of 2012 with Mr. Upton and an Assistant United States Attorney, Respondent said that the tobacco was carry over tobacco. CX-21. At the hearing before me, Respondent admitted that he was not truthful with Mr. Upton. Tr. at 387-388.

Respondent's explanation for carrying over tobacco is not supportable. Respondent maintained that tobacco would deteriorate every year that it is stored, or at least turn darker, which was the reason he could not sell it in the first place. Mr. Boyett agreed that tobacco carried over for years would be worthless. Tr. at 226. Despite the risk of further reducing its value, Respondent purportedly kept the tobacco in question for three years. Respondent also testified that the carry over tobacco was of high quality, but he got a very minimal price for it and sold it as trash.

Despite the testimony of witnesses who vouched for Respondent's honesty, the preponderance of the evidence does not support his version of events. The amount of tobacco that he has said was held over is questionable, given the contradiction between Mr. Rocker's observation that Respondent's barns were full of tobacco when he would have expected the crop to have been sold and Dr. Lane's description of some bales of tobacco that did not fill a warehouse. I accord weight to Dr. Lane's testimony that Respondent stored some tobacco out of season, but the tobacco could easily have been the bales of trash tobacco that Respondent testified he collects during the growing season.

Respondent undoubtedly sold 25,000 pounds of tobacco to ITS that he failed to report but the evidence does not establish the source of the crop. I credit Mr. Boyett's testimony that invoices confirmed that Respondent sold him tobacco, but not 40 acres worth, which raises the question of what happened to the crop grown on the non-irrigated acreage of Unit 104. Respondent asserted that the crop was mostly lost to drought, and that he harvested what he could and left the rest unharvested. Tr. at 340-341. I find that the preponderance of the evidence does not support that drought conditions ravaged the non-irrigated crop.

Despite Respondent's adjustor's August 12, 2009, field inspection that concluded that the crop looked good, Respondent prospectively filed a notice of loss for drought. Although Respondent concluded in August, 2009, "that if we didn't start getting some rain I couldn't harvest that tobacco" (Tr. at 314), weather expert Dr. Stephen Underwood "did not think there would be drought conditions in [August and September, 2009]". Tr. at 533. Tobacco expert Rex Denton testified that 21 days without rain after the crop was appraised on August 12, 2009, would have had little effect on the crop. Tr. at 250. Expert Wesley Harris testified that the amount of water needed after August 12, 2009 would not have mattered to the development of the crop. Tr. at 571. Dr. Underwood opined that the period from June to August 6, 2009, was the fifth driest on record, but Mr. Day's inspection on August 12, 2009, revealed a crop that looked good.

Respondent proffered other claims of loss due to drought in 2009, but the evidence failed to establish that the claims were paid. In addition, the record does not establish that the conditions creating a loss of a corn or peanut crop to drought would similarly affect a tobacco crop. The evidence of other claims of loss due to drought has little probative value.

I accord little weight to the opinion of agricultural expert Wesley Harris that wet weather early in the season would have a bad effect on the crop (Tr. at 549), as the rain fell on both irrigated and non-irrigated fields, and the irrigated unit produced tobacco in excess of the production guarantee. I find that Mr. Harris' opinion about the look and color of Respondent's tobacco is not probative, as he did not see the actual plant, and he could not say which of the two tobacco crops depicted in photographs was more mature. Tr. at 578; CX-12. Similarly, his opinion about the condition of the fields that he inspected in 2015 is immaterial to the condition of the fields in 2009.

I accord substantial weight to Mr. Day's growing season inspection (GSI) of August 12, 2009[4]. At that time, Mr. Day determined that Respondent's non-irrigated tobacco should produce 2,207 pounds of tobacco per acre, or 97,108 pounds, which would have exceeded Respondent's production guarantee. CX-12. Mr. Day believed that the non-irrigated tobacco appeared to be in excellent condition (Tr. at 79) and when he received Respondent's claim "it was a shock" to him (Tr. at 109). Mr. Day had never completed an appraisal that missed its mark as much as the August 12, 2009, appraisal for Respondent's Unit 104. Tr. at 109.

In 2009, Respondent reported that he produced 13,394 pounds of tobacco from his non-irrigated field, Unit 104. CX-15. He produced 83,714 pounds less than his GSI estimated. Respondent certified that he produced 53,046 pounds less than the guaranteed production and that the information on the production worksheet was correct. CX-15. Mr. Day calculated that because of the production deficit for Unit 104, Respondent was due an indemnity payment of $104, 429.00, which yielded a payment of $72,688.00 to Respondent, after application of credits due to GAIC,

I find that the preponderance of the evidence supports finding that Respondent intentionally filed a false claim for indemnification under the crop insurance program. I do not find Respondent's testimony credit worthy. He admittedly lied to Investigator Upton during their interview, and although Respondent stated that he was focused on getting back to work, Mr. Upton observed that Respondent participated in the interview without expressing the need to return to work.

Respondent's shifting explanations for the source of more than 25,000 pounds of tobacco sold to ITS further impugn his credibility. Respondent first denied selling tobacco to ITS, then

[4] Although the handwriting on the drought notice of claim is very similar to Mr. Day's and calls his denial of involvement in the notice of loss into question, his GSI appraisal and testimony are inherently consistent and credible.

stated that the sales resulted from trash tobacco, which was as much as he could harvest, leaving the unharvested crop in the field. CX-19; Tr. at 320-321; 340-341. He then reported that the tobacco sold to ITS was carryover tobacco. Respondent's vague and equivocal testimony is not reliable.

It is significant that Respondent s production from his irrigated Unit 101 exceeded his guarantee in 2009. CX-6. It is speculative to conclude that some of the excess production sold from Unit 101 came from Unit 104. However, the evidence demonstrates that at least some of the 25,000 pounds of the crop sold to ITS represents unreported tobacco harvested by Respondent in 2009, even crediting that some of the tobacco was trash tobacco from the non-irrigated acreage and some carry over tobacco. Therefore, Respondent knowingly and intentionally provided false information when he certified the production worksheet for Unit 104.

I give little weight to the July 9, 2015, Decision of Arbitrator Robert N. Dockson. RX-35. That decision has no precedential value to my findings, and my conclusions are contrary to Arbitrator Dockson's finding that Respondent did not intentionally conceal the existence of carry-over tobacco. The Arbitrator accepted Respondent's contention that the unreported tobacco that he sold was carried over from 2006, and on that basis overturned GAIC's voidance of Respondent's 2009 MPCI policy and GAIC's finding of an overpayment. I do not know what evidence Arbitrator Dockson relied upon to reach his conclusion but I reject Respondent's contention that the source of all of the unreported tobacco that he sold in 2009 was carry over tobacco.

I accept that Respondent carried over some tobacco from some year, crediting Dr. Lane's testimony. The preponderance of the evidence does not support that all of the unreported crop

that Respondent sold in 2009 represented the at most dozen bales that Dr. Lane observed repeatedly in the winter months of 2007 and 2008. In addition to failing to accurately report the source of tobacco that he sold in 2009, I find that Respondent failed to report carry-over tobacco in 2006, 2007, 2008, and 2009, which constitutes a serious lapse in his responsibilities under the crop insurance program.

Respondent's only explanation for not reporting his carryover tobacco and its sale to anyone involved in the crop insurance program, including his agent Mr. Webb, was that he did not know he should have reported it. Tr. at 375; CX-8. Respondent's ignorance of reporting requirements does not excuse him from failing to comply with FCIC's guaranteed tobacco crop provisions. CX-5. Had he reported the tobacco to his agent, Mr. Webb would have included it in his acreage report. CX-44. Moreover his assertion that he believed he did not have to report production over his guarantee (Tr. at 309-311) is at odds with his report of excess production from Unit 101 in 2009.

Accordingly, I find that Complainant has established by a preponderance of the evidence that Respondent willfully and intentionally provided false or inaccurate information to RMA and to his insurer regarding a claim of loss of a crop insured under the federal crop insurance program and failed to comply with FCIC reporting requirements.

4. Sanctions

The Act provides for the imposition of sanctions for program noncompliance and fraud. 7 U.S.C. § 1515(h). "A producer, agent, loss adjuster, approved insurance provider, or other person that willfully and intentionally provides any false or inaccurate information to the Corporation or to an approved insurance provider with respect to a policy or plan of insurance…may…be subject to …sanctions…" 7 U.S.C. § 1515(h)(1). In addition, a

producer that "willfully and intentionally fails to comply with a requirement of the Corporation" may be subject to sanctions. 7 U.S.C. § 1515(h)(2). "If the Secretary determines that a person … has committed a material violation…a civil fine may be imposed for each violation in an amount not to exceed the greater of… the amount of the pecuniary gain obtained as a result of the false or inaccurate information provided or the noncompliance with a requirement of this subchapter; or $10,000". 7 U.S.C. § 1515(h)(3).

"[A]ny person who willfully and intentionally provides any materially false or inaccurate information to FCIC or to any approved insurance provider reinsured by FCIC with respect to an insurance plan or policy issued under the authority of the Federal Crop Insurance Act…may be subject to a civil fine…and disqualification from participation". 7 C.F.R. § 400.454(b)(1). "[P]articipants who fail to comply with a requirement of FCIC may be disqualified". 7 C.F.R. § 400.454(b)(2).

I have found that Respondent willfully and intentionally provided false or inaccurate information to FCIC when he certified his production worksheet for Unit 104 with the knowledge that the information was not accurate. I have further found that Respondent willfully and intentionally failed to report the production of tobacco that he carried over for some time. Therefore, I find that Complainant's requested sanctions are appropriate.

I hereby impose a civil fine of $11,000.00 and disqualify Respondent from participating in the crop insurance program for a period of five years.

IV. FINDINGS OF FACT

1. Respondent Steve Lane operates a farm in the state of Georgia.

2. Respondent was a participant in the Federal crop insurance program at all times pertinent to this adjudication.

3. For the 2009 crop year, Great American Insurance Company (GAIC) was the approved insurance provider pursuant to sections 515(h) and 502(b)(2) of the Act.

4. For the 2009 crop year, GAIC provided crop insurance coverage for Respondent's flue cured tobacco in Emanuel County, Georgia under policy number 973633. Respondent's policy was reinsured by FCIC in accordance with the Act.

5. For 2009, Respondent insured two separate flue cured tobacco units: Unit 101 consisted of 45.0 acres which were irrigated, and Unit 104 consisted of 44.0 acres and was not irrigated.

6. Unit 101 was assigned a production guarantee of 71,100 pounds or 1,580 pounds of tobacco per acre, with a liability of $131,535.00.

7. Unit 104 was assigned a production guarantee of 66,440 pounds or 1,510 pounds of tobacco per acre, with a liability of $122,914.00.

8. Respondent selected a coverage level of 75% with a price election of $1.85.

9. Respondent reported planting Unit 101 on April 20, 2009, and Unit 104 on April 10, 2009.

10. On August 7, 2009, Respondent filed a Notice of Loss on Unit 104 due to drought conditions expected to occur in September.

11. On August 12, 2009, insurance loss adjuster Ned Day conducted a growing season inspection of Respondent's insured tobacco and estimated that Unit 101 would produce 2,188 pounds of tobacco per acre and Unit 104 would produce 2,207 pounds of tobacco per acre.

12. Both of Mr. Day's estimates exceeded Respondent's production guarantee.

13. From September 9, 2009, through October 15, 2008, Respondent sold 115,051 pounds of tobacco from Units 101 and 104 to MC Planters Warehouse for $183,557.43.

14. MC Planters Warehouse rejected 75,442 pounds of Respondent's tobacco.

15. Respondent reported that Unit 101 produced 177,099 pounds of tobacco of which 101,657 pounds were sold to MC Planers for $165,042.00, which constituted 30,557 pounds above his production guarantee.

16. Respondent reported that Unit 104 produced 13,394 pound of tobacco, all of which he sold to MC Planters for $18,515.85.

17. Respondent alleged that he did not meet his production guarantee on Unit 104 and suffered a production loss.

18. In December, 2009, Insurance adjuster Ned Day prepared a production worksheet using information provided by Respondent and calculated an indemnity due to $104,429.00 for the loss of tobacco from Unit 104.

19. Respondent signed the production worksheet certifying that Unit 104 only produced 13,394 pounds of tobacco.

20. On January 29, 2010, Respondent collected an indemnity payment of $104,429.00, minus credits due to GAIC, for a total of $72,688.00

21. During the course of a review of the administration of the crop insurance program, the Risk Management Agency discovered that Respondent had not reported the dale of 29,248 pounds of tobacco for $12,052.20 to Independent Tobacco Service in October and November, 2009.

22. Respondent provided various explanations for not reporting the sales, and for the source of the tobacco that was sold.

23. One of Respondent's assertions was that the tobacco he sold was carried over from 2006.

24. Respondent carried over some tobacco, but the amount is not verifiable.

25. Respondent failed to report carry over tobacco in 2006, 2007, 2008 or 2009.

26. There is no evidence that drought existed in 2009 that affected the tobacco crop on non-irrigated tobacco grown in Respondent's geographic area.

27. Respondent certified a production worksheet that reported false information of tobacco on Unit 104 in 2009.

28. Respondent was paid an indemnity based on a false claim of loss due to drought.

V. CONCLUSIONS OF LAW

1. The Secretary has jurisdiction over this matter.

2. Respondent's reporting of false production represents a material misrepresentation of fact under the Federal Crop Insurance program.

3. Respondent's failure to report carryover tobacco was a violation of requirements of FCIC and of his insurance policy, Section 27, and voided his policy.

4. Respondent was paid an indemnity overpayment for losses that he did not incur.

5. 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)).

6. Respondent's violations of the Act warrant the imposition of the sanctions recommended by USDA.

ORDER

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 Steven Lane, individually and as partner to or principal of any other entity, is disqualified from receiving any monetary or nonmonetary benefit provided under each of the following for a period of five 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.

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).

A civil fine of $11,000.00 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, Risk Management Agency, Fiscal Operation Branch
Attn: Dena Prindle
Beacon Facility Mail Stop 0801
P.O. Box 419205
Kansas City, Missouri 64141-6205

Your payment should be annotated with "Account Name: Steve Lane-Civil Fine"

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.

SO ORDERED, this 5th day of April, 2016.

Janice K. Bullard
Administrative Law Judge