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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY

Docket No. 16-0065

In re:

CARL PARKER,

Complainant.

ORDER DISMISSING COMPLAINT

I. PROCEDURAL HISTORY

On February 25, 2016, Carl Parker ("Complainant") filed a complaint as an individual and as administrator for the Estate of Gary L. Parker alleging that the United States Department of Agriculture, Farm Service Agency ("USDA"; "FSA") discriminated against him and decedent Gary L. Parker on the basis of race. Complainant asserts that the Estate of Gary L. Parker has the right to a hearing before the Office of Administrative Law Judges (OALJ) pursuant to 7 C.F.R. § 15f.9, 15 U.S.C. §§ 1691 et seq., and section § 741(b) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105-277 (Section 741). Complainant cites to actions that gave farmers who believed they were discriminated against by USDA in violation of the Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.) additional time to file complaints.

II. DISCUSSION

1. Section 741

7 C.F.R. Part 15f applies to complaints of discrimination that were filed with the USDA prior to July 1, 1997. In order to benefit from the expansion of time provided by Section 741, an individual would have needed to have filed a complaint with USDA's Office for Civil Rights'

(OCR) Docketing Clerk before July 1, 1997, and to have alleged discriminatory actions during the period beginning January 1, 1981 and ending December 31, 1996. 7 C.F.R. § 15f.2. Persons who had filed a complaint before July 1, 1997, were allowed until October 21, 2000, to request USDA to review their complaint. 7 C.F.R. §15f.5.

The Director of OCR was authorized to resolve complaints, refer them for formal investigation, or inform complainants that OCR would not settle the complaint. In instances where the Director informed complainant that the complaint would not be settled prior to February 14, 2003, complainants were given the right to request a hearing before OALJ. 7 C.F.R. § 15f. In addition, complainants who did not wish the Director to review a Section 741 complaint could request a hearing before OALJ.

In the instant matter, Complainant Carl Parker provides no evidence that decedent Gary Parker filed a Section 741 complaint with the OCR Docketing Clerk. Complainant merely alleges his belief that the decedent was denied relief and "filed for a reexamination of the decision". He asserts that decedent applied for loans with USDA between 1981 and 1996, but provides only evidence of his own dealings with USDA.

As I am unable to determine that a complaint was filed by an eligible party, I hereby dismiss the allegations regarding Section 741. See, 7 C.F.R. § 15f.12.

2. Complaints of discrimination against Carl Parker.

7 C.F.R. Part 15d sets forth the nondiscrimination policy of USDA regarding programs or activities in which agencies of USDA provide benefits directly to persons, and establishes the process for administrative review of complaints of discrimination. 7 C.F.R. §15d.1. Individuals who believe that they have been subjected to discrimination on the grounds of race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, disability, or financial status may file a written complaint with the Secretary or an Agency, which shall be

referred to the Director of the Office of Civil Rights, USDA("OCR"). 7 C.F.R. §15d.4(a). The Director is authorized to investigate complaints and make final determinations as to the merits of the complaint and to order corrective actions arising from the complaints. 7 C.F.R. §15d.8(b).

Complainant's allegations in the instant matter fall within the scope of Part 15d, as he contends that he was discriminated against by USDA employees who denied his eligibility for loan servicing because of his race. The prevailing regulations do not provide the right to a hearing before the Office of Administrative Law Judges regarding the OCR's conclusions, and the rules specifically state that the OCR "will make final determinations as to the merits of complaints. . .and as to the corrective actions required to resolve program complaints." 7 C.F.R. §15d.4(b). Congress may authorize agencies to promulgate such regulations deemed necessary to implement a statute. U.S. Const., Article I, Section 8, Clause 18.

III. CONCLUSION

I find that OALJ is without jurisdiction to grant Complainants' request for a hearing. The matter shall be forwarded to the Director of the Office of Civil Rights for resolution pursuant to prevailing regulations.

ORDER

Petitioner's petition for a hearing is hereby DISMISSED.

The Hearing Clerk shall forward all documents associated with this case to the Director of the Office of Civil Rights for the Farm Service Agency, 202-401-7164.

So ORDERED this 21st day of March, 2016, in Washington, D.C.

Janice K. Bullard
Administrative Law Judge