

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

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MICHAEL W. SHELLEY AND)
HUDSON T. SHELLEY)
)
PETITIONERS,)
)
)
UNITED STATES OF AMERICA,)
FARM SERVICE AGENCY, UNITED STATES)
DEPARTMENT OF AGRICULTURE,)
)
DEFENDANTS.)

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA
CASE NO. 1:20-cv-505-RAH-WC

PETITION FOR JUDICIAL REVIEW OF ADMINISTRATIVE ACTION,
AND HEARING DE NOVO

PARTIES

1. Your Petitioners, Michael W. Shelley and Hudson T. Shelley, file this petition for administrative review and hearing de novo against the United States of America, and the Farm Service Agency, United States Department of Agriculture, (Agency) pursuant to Title 5 USC § 706; 7 USC § 7996; 28 USC § 2341 *et seq.* and 7 C.F.R. §§ 706, 718.2, 11.13 & 1437) on the final Agency Action as set forth herein.
2. The Petition arises from the denial of claim benefits under the Noninsured Crop Disaster Assistance Program (NAP) under the provisions of the Federal Agricultural Improvement and Reform Act of 1966. (7 USC § 7333).
3. Michael W. Shelley seeks relief from the Appeal Determination dated December 19, 2019, and subsequent denial by the Director, USDA National Appeals Division, Secretary of Agriculture, March 31, 2020, case number 2018 01 CRK Squash 2019S000397. (Exhibit One, attached hereto and specifically incorporated herein by reference.)
4. Hudson T. Shelley seeks relief from the Appeal Determination dated December 19, 2019, and subsequent denial by the Director, USDA National Appeals Division, Secretary of Agriculture, on March 31, 2020, case number

2018 01 CRK Squash 2019S000398. (Exhibit Two, attached hereto and specifically incorporated herein by reference).

5. Your Petitioners have exhausted all administrative remedies, including County Committee, State Committee, USDA National Appeals Division, Secretary of Agriculture and Director Review; and this Petition seeks to appeal those final Agency actions, review the Agency actions de novo, and be granted equitable relief.
6. The Respondent Farm Service Agency (FSA) is an authority of the Respondent, United States Department of Agriculture.
7. The records of the Agency Actions, as well as various statutes and regulations, are attached and specifically incorporated herein by reference.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to 5 USC § 706; 7 USC § 1508(b)(c)(h); 7 USC §§ 6998, 7333 & 7996; 7 C.F.R. § 1437; 7 C.F.R. § 11; 28 USC §§ 1331, 1391, 1346(a), 1402(a); 28 USC § 2341 *et. seq.*;
9. Venue is proper in the United States District Court for the Middle District of Alabama, Southern Division, because your Petitioners, Michael W. Shelley and Hudson T. Shelley, are United States Citizens over the age of 21 years, who reside in Houston County, Alabama, and some of the actions complained of herein occurred in Houston County, Alabama. The entire administration activity of the Shelleys' farming is conducted from Ashford, Houston County, Alabama. (28 USC § 2343).

GENERAL FACTS

10. Your Petitioners have farmed various crops in south Alabama, Georgia and Florida for many years. Family members are multi-generational farmers of both row crop and specialty crops, including squash, watermelons, greens, tomatoes, cucumbers and various other crops, forages and seed. Petitioners' principle purposes of business are agriculture.

11. Annually, Petitioners finance the next year's crops through local banks, often assigning crops, production, insurance and disaster payments as collateral in order to buy seed, fertilizer, herbicides, insecticides, costs of labor, equipment and irrigation, among other costs necessary to produce, harvest and sell crops.
12. In crop year 2018 Petitioners, as they and their families have historically done, engaged in farming by announcing their intention to plant, produce and harvest various crops and to acquire NAP coverage for specialty crop losses due to disaster because of damaging weather, such as drought, excessive moisture, freeze, etc.; adverse natural occurrences, such as earthquake or flood; and conditions related to damaging weather or adverse natural occurrences, such as excessive heat, disease or insects, any of which occurs during the coverage period. (Ex.1, pp 0091-94; Ex. 2, pp56-57; Ex. 3, NAP Basic Coverage).
13. One of the crops Petitioners planned to plant was Crookneck Squash, a specialty crop grown for food, and eligible for NAP coverage.
14. Petitioners are eligible producers as defined under NAP.
15. NAP coverage requires a producer such as the Petitioners to work with the Farm Service Agency (FSA) in the state and county where the farm is located to complete the necessary forms to obtain and enforce NAP benefits. The FSA is created by Congress to serve the farmers and to assist them to obtain benefits from Congressionally mandated programs.
16. The Petitioners' farms in question are located in Jackson County, Florida, (Jackson) and the Petitioners made applications for coverage through the Jackson FSA office.
17. The application form for obtaining NAP coverage is designated CCC-471.
18. This Petition for Review arose as a result of the denial of eligibility for benefits under the 2018 NAP claims filed by Petitioners on 01 CRK Squash based on the arbitrary and unreasonable conclusion that 01 CRK Squash was not selected for coverage on their respective CCC-471 application forms.
19. Petitioners dispute the Agency Action and allege that a reasonable view of all the facts and forms clearly indicate that CRK Squash was the intended crop on the application.

20. On January 31, 2018 each Petitioner, through the designated Power of Attorney, Todd Shelley, timely filed a form CCC-471 application for NAP coverage and orally informed the Agency the application was for crooked neck squash.
21. Even though the Agency designates different pay codes for different varieties of squash, the agency only assigns one identifying crop code for all squash, which is the number 0155, and that number is inserted in the application by the Jackson Agency regardless of the type of squash being planted.
22. The Application Form CCC-471 contains spaces for designating the crop and variety, but the instructions for completing CCC-471 **required** the Jackson County Office to complete items 1-11 on form CCC-471 which contain the designation crop and variety. (Ex. 4, *Handbook for Agency*, Para.23, G “Instructions for Completing CCC-471”).
23. Although the producer orally answered the question on variety as “crooked neck” squash, the Agency failed to complete the blank as instructed and, instead, inserted “sum” as the squash variety, a computer entry which was the responsibility of the Agency. The producer signed the forms under the mistaken belief that the Agency had correctly designated both the crop and the variety.
24. In failing to specify the type of squash as crooked neck, the Agency not only violated its own rules, but also set the stage for its later “bootstrapping” its compounded negligence in denying the claims.
25. In addition to filing form CCC- 471, each Petitioner was also required to file form FSA-578 verifying the crop and acreage planted for crop year 2018. (Acreage report). (7 C.F.R. § 1437.11; Ex. 3, NAP at req.10).
26. Petitioner Hudson T. Shelley timely filed, on 4/27/18, an acreage report that listed the crop as crooked neck squash (CRK) on his 25.66-acre farm for planting period 01, and included all required information. (Ex. 2, pp 0050-52).
27. Petitioner Michael W. Shelley timely filed, on 5/14/18, an acreage report that listed the crop as crooked neck squash (CRK) on his 65.10-acre farm for planting period 01, and included all required information. (Ex. 1, pp 0080-82).

28. The acreage report is combined with the application for NAP coverage to determine the **type** squash crop and acreage for which the Petitioners are eligible for benefits.
29. FSA-578 acreage report states:
“THE INFORMATION WILL BE USED TO COLLECT PRODUCER CERTIFICATION OF THE REPORT OF ACREAGE OF CROPS/COMMODITIES AND LAND USE DATA WHICH IS NEEDED IN ORDER TO DETERMINE PRODUCER ELIGIBILITY TO PARTICIPATE IN AND RECEIVE BENEFITS UNDER FSA PROGRAMS.” (Ex. 1, p 0050; Ex.2 p 0050).
30. Therefore, as of the filing of the acreage reports in FSA-578, despite any mistake by the Agency in completing the application form CCC- 471, the Agency had been paid the service fee, had received the designation of Crookneck Squash on the Petitioner’s farm and had the information needed in order to determine Petitioner’s benefits in the event of a disaster that would trigger a claim.
31. Although squash, like other crops, uses single pay codes for different varieties, and although there is a blank where the Jackson Office could have designated “CRK” for this variety of squash, FSA either unreasonably or arbitrarily chose not to do so.
32. The Jackson Office also unreasonably and arbitrarily chose to ignore the timely filed acreage report that clearly designated CRK as the type squash planted on Petitioner’s farm.
33. Since the Petitioners paid the service fees, committed to paying any future premium and filed a comprehensive acreage report, they should be entitled to pursue and receive a claim payment for CRK squash.
34. Since no premium would be due unless there was a disaster, then the Defendant is not prejudiced, would suffer a windfall by its own incompetence and cost the Petitioner and its bankers substantial sums of money and damages.
35. Rather than view the NAP coverage as requiring a comprehensive scheme of interaction among the farmer, the adjuster and the Agency, FSA chose, instead,

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