

strictly adhere to procedural rules that protect core due process rights. After all, “[g]overnment contracting has become an economic mainstay for a number of commercial enterprises. It goes without saying, therefore, that disqualification from government contracting is a very serious matter for these businesses.” *Sloan v. Dep’t of Hous. & Urban Dev.*, 231 F.3d 10, 17 (D.C. Cir. 2000). Indeed, “the very economic life of the contractor may be in jeopardy.” *Old Dominion Dairy Prod., Inc. v. Sec’y of Def.*, 631 F.2d 953, 968 (D.C. Cir. 1980). Suspension and debarment expose a contractor to “economic losses, professional indignities, and injuries to their reputations, and these sufferings no doubt will continue to linger so long as [the contractors] are tarnished by an official record suggesting that they engaged in ‘serious irregularities’ in their business dealings with the Government.” *Sloan*, 231 F.3d at 17.

The U.S. Department of Agriculture, acting through the U.S. Risk Management Agency has ignored these truisms and wielded its awesome power of suspension without observing the applicable regulatory requirements or following key constitutional protections. USDA has indefinitely suspended Kevin Gubbels and his insurance agency, Insure My Honey, Inc., from participating in the latter’s business of selling and servicing federal crop insurance policies. USDA has imposed such suspension without clearly identifying a lawful basis for that decision, without providing him with a hearing where he could contest disputed facts underlying the suspension, and without issuing a final decision in a reasonable period of time. The agencies have even forbidden Mr. Gubbels’s independent agents from issuing or renewing any crop insurance policies even though they were never named in the suspension order and they are not under Mr. Gubbels’s control. Moreover, Mr. Gubbels has no hope of having a hearing in front of an impartial adjudicator, as the existing regulations consolidate the roles of both prosecutor and judge in the same person—the agency head.

Neither the applicable regulations nor the Fifth Amendment's Due Process Clause sanction the agencies' conduct. The Defendants must be enjoined from continuing this unlawful conduct.

PARTIES

1. Plaintiff Kevin Gubbels is a natural person and a resident of the State of Nebraska.
2. Plaintiff Insure My Honey, Inc. is a Nebraska Corporation with its principal place of business in Nebraska.
3. Defendant Sonny Perdue is the agency head of the United States Department of Agriculture and is sued in his official capacity as Secretary of the USDA.
4. Defendant USDA is an agency of the United States.
5. Defendant Administrator Martin R. Barbre is the agency head of the United States Risk Management Agency and is sued in his official capacity as Administrator of the RMA.
6. Defendant RMA is an agency of the United States.

JURISDICTION AND VENUE

7. This Court has federal question jurisdiction pursuant to 5 U.S.C. § 702 and 28 U.S.C. § 1331.
8. This Court has the authority to grant declaratory and injunctive relief in this matter pursuant to 28 U.S.C. §§ 2201 and 2202.
9. Venue for this action properly lies in this district pursuant to 28 U.S.C. §§ 1391(b)(2), and (e)(1)(C) because Mr. Gubbels resides in this judicial district and because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

STATEMENT OF FACTS

10. Plaintiff Kevin Gubbels is a native of Nebraska who has been involved with agriculture his entire life. He began his own farming operation at the age of 12 and has worked either as a farmer within the agriculture industry ever since.

11. In 2009 he began selling crop insurance and slowly developed his own business. In 2016 he began selling Apiculture Pilot Insurance and Pasture, Rangeland, Forage (PRF) programs through the Federal Crop Insurance Program (FCIP), administered by the USDA RMA. He sold these policies through his corporate entity, Insure My Honey, Inc.

12. In 2019, Insure My Honey, Inc. had independent contractor relationships with 60 crop insurance agents operating in 25 different states. Mr. Gubbels never had direct management or supervisory authority over the contracting agents. Together the agents sold more than \$12 million in FCIP insurance premiums. Insure My Honey, Inc. had net revenues of approximately \$1.7 million in 2019.

13. As an FCIP agent Mr. Gubbels agreed to be bound by the Standard Reinsurance Agreement issued by the Federal Crop Insurance Corporation (FCIC). Section IV(h)(2) of the applicable agreement provided a catchall saying, “[T]he Company and its affiliates shall comply with FCIC procedures[.]”

14. PRF policies help protect farmers against loss due to a lack of precipitation. For 2020 policies, the sales closing date *to agents* was November 15, 2019. However, agents were then required to submit the policy applications to an approved insurance provider (AIP) by December 9, 2019. RMA’s processing date *from AIPs* to RMA was December 15, 2019.

15. On December 3, 2019, Mr. Gubbels made a presentation at an Imperial County Farm Bureau meeting in Imperial County, California. At the meeting, Mr. Gubbels represented to farmers that they could still apply for 2020 PRF policies, but insisted that they apply no later than December 5, 2019, so that he could submit and process the applications to RMA before the December 9th deadline.

16. At the meeting Mr. Gubbels noted that prior PRF policies had “paid out” in California for 8 out of 10 years and that it resulted in a “profit over premium cost” of \$3.60 per acre over the last 20 years. Mr. Gubbels made sure to describe the program as a “safety net” and a risk mitigation strategy. Mr. Gubbels also discussed multiple crop insurance programs but did not assert that a producer could participate in both the PRF program and the Forage Production program.

17. On February 21, 2020, Martin R. Barbre, Administrator for the RMA, sent Mr. Gubbels a Notice of Suspension and Proposed Debarment from Participation in United States Government Programs. Pursuant to the notice Administrator Barbre “immediately excluded [Mr. Gubbels] from participating as either a participant or a principal in covered transactions under United States non-procurement and procurement programs through the executive branch of the United States Government.” Administrator Barbre further “propose[d] to debar [Mr. Gubbels] for three years from participating in programs of the United States Federal government, to commence upon the issuance of a final notice of government-wide debarment.” The suspension was ongoing “pending the completion of debarment proceedings.”

18. Administrator Barbre alleged that Mr. Gubbels merited suspension pursuant to 2 C.F.R. § 180.800(b)(3) and 2 C.F.R. §§ 180.700(b),(c), which permitted suspension based on a “[v]iolation of the terms of a public agreement or transaction so serious as to affect the integrity

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