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United States District Court,
District of Columbia.

Timothy PIGFORD, et al., Plaintiffs,
v.
Chuck CONNER, Acting Secretary, United States Department of Agriculture,[1] Defendant.
Cecil Brewington, et al., Plaintiffs,
v.
Chuck Conner, Acting Secretary, United States Department of Agriculture, Defendant.

Civil Action Nos. 97-1978 (PLF), 98-1693(PLF). | Dec. 21, 2007.

Attorneys and Law Firms

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Opinion

MEMORANDUM OPINION AND ORDER

PAUL L. FRIEDMAN, District Judge.

***1** This matter is before the Court on a motion to enforce the consent decree filed by Anthony and Selena Miller, who are members of the plaintiff class and successful Track A claimants.[2] On June 30, 2005, the Adjudicator issued a decision discharging the Millers' loans pursuant to the debt relief provisions of the Consent Decree governing this case. *See* Miller Mot. at 3. The Millers argue that the Adjudicator's decision eliminated all interests defendant had in the proceeds of a loan which had been placed in a supervised bank account, thereby entitling the Millers to those proceeds without any restrictions. *See id.* at 5-7.[3]

Defendant responds that the Millers are not entitled to the proceeds because (1) the proceeds were not the Millers' assets and the defendant therefore did not impermissibly obtain payment on a non-existent debt when it recovered those proceeds; and (2) even if defendant did (unintentionally) obtain a payment, the Millers suffered no harm and thus are entitled to no relief. *See* Def.'s Opp. at 6-8; *id.* at 8-9. The latter argument is based on the idea that the Adjudicator's decision eliminated the Millers' obligation to *repay* USDA, but did not eliminate the "separate and distinct obligation[ ]" to use the loan proceeds only for hog farming purposes. *Id.* at 9. Thus, reasons defendant, because the Millers still do not have the permits required to engage in hog farming, they have no legal right to recover or use the funds at issue. *See id.* at 8-9. Defendant further contends that the Millers' continuing inability to use the proceeds gives defendant authority to reclaim and retain the proceeds as "unexpended loan funds." *See id.* at 9-10; *see also* 7 C.F.R. § 1902.15(b) (2005).

In light of the parties' positions, the nature of the controversy, and the relatively small amount in dispute-approximately $23,000-the Court concludes that this matter would benefit from settlement discussions. The Court therefore will order the parties to initiate negotiations and to contact the court-appointed Monitor, Randi Ilyse Roth, to discuss ways in which the Monitor and her Office can facilitate the parties' efforts. The Court urges both sides to approach the issue with a degree of flexibility in order to achieve a fair and efficient resolution without judicial intervention.

In the event that the parties are unable to resolve their differences, the Court will require additional briefing to reach a decision. In their reply brief, the Millers argue that they became "paid-up borrowers" under the applicable USDA supervised bank account regulation when the

Adjudicator discharged their debts. *See* Miller Reply at 2-3; *see also* 7 C.F.R. § 1902.15(d) (2001) ("paid-up borrower" regulation in effect at the time of the Adjudicator's decision in the Millers' case).[4] The Court finds this argument persuasive, at least on first reading. If the Millers are correct, then it is possible that defendant's own regulation establishes the Millers' entitlement to the funds at issue. The Court therefore believes it would be useful for defendant to respond to this argument (addressing, for example, whether the Millers' interpretation is correct and whether any subsequent revisions to this regulation or other regulations should affect the analysis), and for the Millers to offer further support for their interpretation of the "paid-up borrower" regulation and its applicability to them. The Court also believes it would be useful for both parties to address certain related matters, such as (1) whether other federal agencies with authority to enter into supervised bank account agreements have confronted analogous situations and, if so, how they have resolved those situations; (2) whether creditor-debtor law or property law sheds any light on the effect of the Adjudicator's decision on the parties' interests in the supervised bank account proceeds; and (3) whether there is any helpful discussion of these or closely related issues in recent case law.

***2** Accordingly, it is hereby

ORDERED that the parties pursue further settlement discussions with the assistance of the court-appointed Monitor, Randi Ilyse Roth. The Monitor's Office may be reached via telephone at 1-877-924-7483; and it is

FURTHER ORDERED that if the parties are unable to reach a settlement agreement on or before February 1, 2008, they shall file supplemental briefs as follows. On or before February 20, 2008, defendant shall file a supplemental brief addressing the Millers' argument that the Millers are entitled to the proceeds of the supervised bank account as "paid up borrowers" under all applicable USDA regulations. The Millers may respond to defendant's supplemental brief on or before March 5, 2008. The supplemental briefs should address the matters listed above.

SO ORDERED.

Footnotes

1 The first amended complaint named Ann Veneman, former Secretary of Agriculture, as the party defendant. The Court subsequently substituted her successor, Mike Johanns, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure. The Court now substitutes Chuck Conner, Acting Secretary of Agriculture and Mr. Johanns' successor, pursuant to that Rule.

2 The papers submitted in connection with this matter are: Motion of Anthony and Selena Miller to Enforce the Consent Decree [1270] ("Miller Mot."); Defendant's Opposition to Motion of Anthony and Selena Miller to Enforce the Consent Decree [1284] ("Def.'s Opp."); and Reply of Anthony and Selena Miller to Defendant's Opposition to Motion to Enforce Consent Decree [1288] ("Miller Reply").

3 United States Department of Agriculture regulations allow for loan proceeds to be placed in "supervised bank accounts" in certain situations. *See* 7 C.F.R. §§ 1902.1 *et seq*. (2005). Withdrawals from supervised bank accounts are permitted only by order of the borrower and countersignature by USDA personnel, or by written demand of certain USDA officials. *See id.* § 1902.10 (2005). USDA maintains a security interest in supervised bank account proceeds which allows USDA to reclaim the proceeds to satisfy a borrower's debts. *See* Def.'s Opp. at 3; Miller Mot., Ex. 5 at 1, ¶¶ 1-2.

The proceeds of the Millers' Operating Loan No. 44-03 were placed in a supervised bank account in 1997. Under the terms of the Millers' loan agreements, the proceeds of this loan were to be used for financing a hog farming business. *See* Def.'s Opp. at 3; *id.* Ex. C. USDA subsequently authorized several withdrawals for that purpose. By 2005, however, a balance of approximately $23,000 remained in the account because the Millers were unable to obtain the environmental permits required to further pursue the business. *See id.* at 3-4. In the meantime, the Millers had become delinquent on Loan No. 44-03. As noted above, the Adjudicator discharged the Millers' loans in June 2005. In July 2005, a USDA official (who apparently was unaware of the Adjudicator's decision) authorized the Millers' bank to issue a check to USDA for all proceeds remaining in the account; USDA then applied those proceeds to the balance owed on Loan No. 44-03. *See id.* at 5. Defendant concedes that at the time the proceeds were reclaimed and applied to the Millers' debt there was, in fact, no debt to repay. *Id.* at 6. Nonetheless, for reasons discussed above, defendant maintains that it need not "write [the Millers] a check for $22,882 as 'debt relief' on a loan that they never used." *Id.* at 1.

4 The version of the "paid-up borrower" regulation in effect at the time of the Adjudicator's decision provided that

> [a] paid-up borrower is one who has a balance remaining in the supervised bank account and has repaid the entire indebtedness to FmHA or its successor agency under Public Law 103-354 and has properly expended all funds advanced by other lenders. In such cases the District Director or County Supervisor will (i) notify the borrower in writing that the interests in the account of FmHA or its successor agency under Public Law 103-354 have been terminated, and (ii) inform the borrower of the balance remaining in the supervised bank account.
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> 7 C.F.R. § 1902.15(d) (2001).