

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROSEMARY LOVE, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 00-2502 (RBW/JMF)
)	
TOM VILSACK, Secretary of the United)	
States Department of Agriculture,)	
)	
Defendant.)	
_____)	

USDA’S REPLY TO PLAINTIFFS’ RESPONSE TO USDA’S STATUS REPORT

INTRODUCTION

Defendant the United States Department of Agriculture (USDA) hereby replies to Plaintiffs’ Response to USDA’s April 12, 2016 Status Report and Renewal of Request for Information, Discovery, and a Hearing (Pls.’ Response) (ECF No. 267). Plaintiffs’ Response is based on a misreading both of the March 2016 Audit Report prepared by the USDA Office of the Inspector General (OIG) regarding the ADR program for Hispanic and female farmers (ECF No. 266-1), and of the Framework for the program (ECF No. 155-1). In any event, there are no live claims pending in this case, and the Court lacks jurisdiction to order the relief plaintiffs seek.

BACKGROUND

A. Fraud Prevention Under the Framework

In addition to the required elements of a claim under each of the three tiers, the Framework contains other terms and conditions for the ADR program, including a series of fraud prevention measures. As Section X of the Framework provides, “[t]he claims materials will

make clear that USDA will take whatever actions it deems appropriate to review, audit, and monitor the proceedings.” Framework, § X(A). “Reviews will be conducted at USDA’s sole discretion to deter and identify fraud, identity theft, and other possible criminal activities.” Id. § X(A)(1). “USDA may take any action it deems appropriate based on its review.” Id.

B. The OIG’s Audit Report

In accordance with Section X of the Framework, the OIG conducted a performance audit “of adjudicated claims to determine if the claims review process [was] adequate and functioning as prescribed, and to ensure that funds [were] distributed only to eligible applicants.”

Framework, § X(A)(2). In the Audit Report, the OIG set forth its objectives, the scope of its audit, and its findings, see Audit Report at 5 (summarizing OIG’s role and objectives), as well as USDA’s written response, id. at 34-35.

ARGUMENT

1. The OIG determined that the claims review process for the ADR program was adequate and functioning as prescribed, and that funds were distributed only to eligible applicants. The summary section of the Audit Report states: “Overall, we concluded that the contractor executed a strong process to ensure that funds were paid to eligible Hispanic and women farmers.” The report further concluded that “the contractor implemented an administration and adjudication process that provided adequate assurance that claimants who met the eligibility and evidentiary standards received an award.” Audit Report at 14. With respect to the fraud prevention measures, the OIG “agreed with the contractor’s conclusions that a large portion of the adjudicated claims should be denied for fraud based on the patterns approved by the Chief Adjudicator.” Id. at 10. The report also states: “Overall, we concluded that the

contractor implemented a strong adjudication process and initiated additional processes to ensure that only claimants who met the eligibility and evidentiary standards received an award.” Id.

To the extent that plaintiffs assert that the OIG’s performance audit does not focus on “whether the process was successful in identifying all claimants with meritorious claims,” and that the audit “does not evaluate at all whether claims deemed untimely by the contractor were correctly denied,” see Pls.’ Response at 5, that was not the stated purpose of the audit.

2. The Audit Report refutes plaintiffs’ repeated contention that the Adjudicator denied claims due to suspected fraud without evaluating these claims. See Pls.’ Response at 1-4. As noted in the Audit Report, of the roughly 22,000 adjudicated claims, the contractor found over 13,000 claims that possibly fit one of the 176 fraud patterns approved by the Chief Adjudicator, and, ultimately, the Chief Adjudicator denied 10,361 of these claims for a fraud concern. Audit Report at 4, 9-10. As these figures indicate, the Adjudicator did not automatically reject all claims that possibly fit such a pattern.

3. Plaintiffs’ Response largely restates contentions and requests for relief from prior filings, in which plaintiffs asked this Court to oversee and conduct an extensive review of the ADR program. See, e.g., Pls.’ Response to USDA’s Status Report and Request for Information, Discovery, and a Hearing (ECF No. 249); Pls.’ Response to USDA’s October 26, 2015 Status Report (ECF No. 259); Pls.’ Notice Regarding Letter from Minority Farm Advisory Committee (MFAC) appointed by USDA (ECF No. 262). USDA has previously addressed those contentions and requests. See USDA’s Reply to Pls.’ Response to USDA’s Status Report (ECF No. 250); USDA’s Response to Pls.’ Notice Regarding Letter from MFAC (ECF No. 263).

As previously noted, there is no legal basis for plaintiffs' requests for relief from the Court regarding the ADR program. The relief they seek is an impermissible attempt to circumvent prior rulings in this case, including the denial of class certification, Love v. Johanns, 439 F.3d 723 (D.C. Cir. 2006), and this Court's rejection of plaintiffs' prior requests for Court review and supervision of the ADR program. Dec. 3, 2010 Order (ECF No. 119). Moreover, because each plaintiff has either dismissed or abandoned her claims before this Court, there are no longer any live claims pending in this case, and the Court therefore lacks jurisdiction to entertain plaintiffs' discovery request.

Also, while the Framework contemplates some oversight of the ADR program by USDA's Inspector General, the Department of Justice, and the Government Accountability Office, see Framework, § X, it does not provide for any oversight or monitoring by plaintiffs or the Court. On the contrary, the Framework expressly states that there will be no review of decisions made by the Administrator and Adjudicator. Id. § VII(C) ("There will be no appeals available to claimants or USDA to challenge decisions made by the Administrator or the Adjudicator," including the Administrator's decision whether a claims package is timely and complete, and the Adjudicator's decision on a claim.). These terms, which plaintiffs acknowledged and agreed to as a condition of participation in the ADR program, foreclose the relief they now seek.

4. A recent decision by the D.C. Circuit in Keepseagle v. Vilsack further confirms this Court's lack of jurisdiction to review the claim process. 815 F.3d 28 (D.C. Cir. 2016). The Circuit affirmed the district court's determination that it lacked jurisdiction to entertain petitioner's challenge to the adjudication of his claim by the Track B Neutral pursuant to the

Keepseagle settlement. Id. at 33. The Circuit re-emphasized its prior holding in Pigford that “district courts enjoy no free-ranging ‘ancillary’ jurisdiction to enforce consent decrees, but instead are constrained by the terms of the decree and related order.” Id. (quoting Pigford v. Veneman, 292 F.3d 918, 924 (D.C. Cir. 2002)). Here, of course, there was no consent decree conferring any continuing jurisdiction on this Court, and each plaintiff has dismissed or abandoned her individual claims.

The Circuit also noted the Keepseagle settlement’s “strong finality language, declaring all claim determinations final and unreviewable,” id. at 34 (quoting settlement language), which is comparable to the finality provision in the Framework. See Framework § VII(C). The Circuit explained that permitting the district court to review claim determinations as part of its jurisdiction “over the distribution of the Fund” would “write the finality provision out of the Agreement almost entirely.” Id. at 34-35. Here, again, there was no agreement conferring on the district court any jurisdiction over the distribution of funds. The Keepseagle decision thus underscores this Court’s lack of jurisdiction to oversee the claim process and to entertain plaintiffs’ discovery requests.

CONCLUSION

Wherefore, USDA requests that the Court deny plaintiffs’ requests for relief regarding the ADR program.

DATED: April 22, 2016

Respectfully submitted,

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