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Memorandum

To: Farmers and Farm Advocates Interested in
Shared Appreciation Agreement Issues

From: Karen R. Krub

Date: May 2, 2001

Subject: District Court Affirms Shared Appreciation Obligation

On March 2, 2001, a federal district judge in Wisconsin issued a decision holding that farmers were required to make payment to the Farm Service Agency (FSA) under a Shared Appreciation Agreement (SAA). *Israel v. USDA*, No. 00-C-223-C, (W.D. Wis. Mar. 2, 2001). The farmers had unsuccessfully argued that no obligation was owed at the end of the ten-year term of the agreement, because they had not stopped farming, sold the farm, or paid off the underlying debt. This is the first published decision that addresses what is an ongoing controversy between FSA borrowers and the agency.

Claim for Payment and NAD Appeal

The case began when FSA notified the farmers that they were at the end of the term of the SAA and that, because their property had appreciated in value, they owed a recapture obligation of \$96,000. The farmers appealed the FSA decision to the National Appeals Division (NAD). In the NAD hearing, the farmers argued that recapture was only due under the SAA if they disposed of the property, ceased farming, or paid the underlying obligation in full prior to the expiration of the agreement. They argued that upon "expiration" of the SAA, their potential obligation ceased. They based their argument on language in the agreement and statements by their FSA county officials that led them to believe that the SAA expired at the end of its term, without obligation.

The NAD hearing officer rejected the farmers' attempt to subpoena the FSA officials as witnesses at the hearing, and issued a decision in favor of FSA, holding that both the SAA and the applicable FSA regulations "clearly state that the shared appreciation is due at the expiration of the agreement." On review, the Director of NAD affirmed the hearing officer's

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decision. The farmers then brought a federal court action to review the final NAD determination.

Court Rejects Arguments That No Payment Is Due

The district court reviewed the SAA language and the administrative record and affirmed the NAD determination. Although the court noted that the agreement "could have been written more artfully," it found that the SAA "conveyed the basic concept" that appreciation would be recaptured when the agreement expired. The court further found that the FSA's position was "supported strongly" by the statute and the regulations, found at 7 U.S.C. § 2001(e)(4) and 7 C.F.R. § 1951.914(b) (1999).

The court rejected the farmers' claim that the government should be estopped from collecting the recapture obligation because the farmers had relied on statements made by local FSA representatives that no recapture would be owed at the end of the term. The court noted the general rule that estoppel is not available against the government and anyone who enters into an agreement with the government takes the risk that those speaking for the government stay within the bounds of their authority.

The court further held that the FSA lending and loan servicing programs implemented sovereign, social welfare goals of government and were not strictly commercial transactions that would allow estoppel to be applied. Finally, the court held that the facts presented did not include any "affirmative misconduct" by the government employees that would allow for an estoppel claim. The court noted that "[a]t most, it appears that [the FSA officer] misunderstood the terms of the agreement and conveyed his mistaken understanding to plaintiffs; plaintiffs do not argue that he tried to trick them or knew of his mistake."

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