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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ROBERTA V. VIERS and
PAUL J. VIERS,

Plaintiffs,

v.

DANIEL GLICKMAN, Secretary of the
United States Department of Agriculture,

Defendant.

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4-99-CV-90431

ORDER ON REVIEW
OF AGENCY ACTION

This matter comes before the Court on Plaintiff's Action for Declaratory Judgment and Review of Agency Action. Plaintiffs, Paul V. and Roberta J. Viers ("the Viers") seek enforcement of the terms of a Shared Appreciation Agreement entered into with an agent of Defendant Daniel Glickman, Secretary of the United States Department of Agriculture.

I. FACTS

The Viers are farmers in Story County, Iowa. In 1978, the Viers received two emergency farm loans totaling \$207,270 from the Farmers Home Administration ("FmHA"), a division of the United States Department of Agriculture. The Viers made payments on these loans in a timely manner.

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By: _____
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In 1988, the Viers sought loan servicing through the FmHA¹ on the loans. Loan servicing is available to individuals who are experiencing difficulty paying their FmHA loans. One of the forms of relief is a loan interest write-off. As a condition of receiving a write-off, the FmHA may require the recipient to enter into a Shared Appreciation Agreement ("SAA"). The terms of an SAA require the recipient to share any appreciation of the property over a specified period of time with the FmHA. The purpose of the agreement is to allow for possible recapture of the write-down amount and thereby reduce the financial burden on the FmHA.

The Viers entered into an SAA on May 18, 1988. The terms of the SAA provided that the Viers would pay one-half of the appreciation on the property securing the loan after ten years. In October, 1998, as the agreement reached its expiration, the property had an appraised value of \$233,200. This amount is not in dispute. The parties instead disagree on the appropriate original value of the property at the time the SAA was entered into.

Following FmHA procedures, when the Viers initially applied for loan servicing in 1988, the local county loan officer drafted a file containing information relevant to the FmHA's servicing decision. The local officer's original valuation on the property was \$151,800. The file containing this value was then submitted to an FmHA Farm Loan Specialist. The Specialist looked over the file and told the county officer to "add \$8000 from unencumbered chattel property and \$38,000 from unencumbered Real Estate to the FmHA value of security." Thus, the SAA, as originally executed in 1988, valued the property at \$197,800.

¹ In 1994, the FmHA was integrated into the Farm Service Agency ("FSA"). Federal farm loan issues are now overseen and controlled by the FSA. Therefore, the discussion of the actions in 1998 will accurately be described as those of the FSA.

For ten years, both parties believed \$197,800 to be an accurate representation of the 1988 value of the property. Then, on November 16, 1998, the FSA notified the Viers that it had found an error in its 1988 valuation of the property and was amending the SAA to correct its mistake. The FSA officer stated that the agency had determined that the Viers received "unauthorized assistance" because of the error and, therefore, they would be responsible half of the farm's appreciation based on a valuation of \$151,800, instead of half of the farm's appreciation based on the original valuation of \$197,800. The Viers would therefore be responsible for \$40,700, rather than \$17,700.

On December 14, 1998, the Viers submitted a Request for Hearing from an Adverse Decision with the National Appeals Division ("NAD") of the FSA. This hearing was held on January 29, 1999. On February 26, 1999, the NAD Appeals Officer who presided over the hearing upheld the agency's decision to adjust the 1998 valuation of the property. Following FSA appeals procedure, the Viers appealed to the NAD Director. The Director affirmed the FSA's decision on June 9, 1999. The Viers have appealed the agency decision to this Court under the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* ("APA").

II. JURISDICTION

There is a strong presumption that agency actions are reviewable under the APA. *See Woodsmall v. Lyng*, 816 F.2d 1241, 1243 (8th Cir. 1987) (citing *Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667 (1986)); *see generally* 5 U.S.C. § 702. Moreover, 7 U.S.C. § 6999 expressly grants an individual adversely affected by a final determination of the NAD the right to file for judicial review under the APA. A person filing for judicial review of an agency action must have extinguished the appeals procedure within the agency. *See* 5 U.S.C. § 704. A

person filing for review also must have suffered a legal wrong. *See* 5 U.S.C. § 702; *Duba v. Schuetzle*, 303 F.2d 570, 574 (8th Cir. 1962).

The Director's June 9, 1999, decision was final, the right to judicial review has been expressly granted to the Viers' claim, and the Viers have suffered a legal wrong. Therefore, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.²

III. STANDARD OF REVIEW

The APA states that the reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706. The reviewing court cannot "substitute its judgment for that of the agency" but may only "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971). Moreover, the "standard of review is a narrow one, deferential to the agency's interpretation of its own regulations and only permitting reversal if the agency action is without a rational basis." *Education Assistance Corp. v. Cavazos*, 902 F.2d 617, 622 (8th Cir. 1990); *see also Baltimore Gas & Elec. Co. v. National Resources Defense Council*, 462 U.S. 87, 105-06 (1983) (agency's decision need only have a rational basis). But "an agency's failure to follow its own binding regulations is a reversible abuse of

² Plaintiffs raise statute of limitations issues. However, since this case involves a judicial review of an administrative decision, rather than enforcement of a contractual claim, the statutes of limitations cited are inapplicable.

discretion." *Carter v. Sullivan*, 909 F.2d 1201, 1202 (8th Cir. 1990) (citing *City of Sioux City v. Western Area Power Admin.*, 793 F.2d 181, 182 (8th Cir. 1986)).

The burden is on the Viers to show that the FSA acted improperly in altering the 1988 valuation of the farm property. See *Department of State v. Ray*, 502 U.S. 164, 179 (1991).

IV. ANALYSIS

The FSA may require a borrower to enter into an SAA under 7 U.S.C. § 2001(e).³ The subsection does not mandate a borrower to enter into an SAA. Instead, it states that the borrower "may" be required to sign an SAA as a condition of loan servicing. *Id.* Within the scope of its legislated power,⁴ the FSA has promulgated 7 C.F.R. § 1951.909 which requires the borrower to enter into an SAA "if the loan(s) is secured by real estate." Since the Viers' mortgage was secured by their farm property, they fell within the scope of the regulation and were, therefore, required to execute an SAA.

The FSA based its decision to adjust the original valuation of the farm on 7 C.F.R. § 1951.556. The regulation states, "When it is determined that unauthorized assistance has been received, an effort must be made to collect from the borrower the sum which is determined to be unauthorized, regardless of amount, unless any applicable Statute of Limitations has expired." 7 C.F.R. § 1951.556. The FSA defines unauthorized assistance as "Any . . . primary loan servicing

³ "As a condition of restructuring a loan in accordance with this section, the borrower of the loan may be required to enter into a shared appreciation arrangement that requires the repayment of amounts written off or set aside." 7 U.S.C. § 2001(e).

⁴ 7 C.F.R. § 1951.551, *et seq.*, are authorized under 7 U.S.C. § 1989 which states, "The Secretary is authorized to make such rules and regulations, prescribe the terms and conditions for making or insuring loans, security instruments and agreements, except as otherwise specified herein, and make such delegations of authority as he deems necessary to carry out this chapter."

action . . . for which the borrower was not eligible." 7 C.F.R. § 1951.552. The write-down the Viers received, and thus, the associated SAA, was a loan servicing action. *See generally*, 7 U.S.C. § 2001.⁵

Section 1951.558 in Title 7 of the Code of Federal Regulations controls agency decisions on servicing actions where it is determined that unauthorized assistance was given. Subsection 1951.558(c) addresses the treatment of servicing actions in which the borrower disagrees with the agency determination. The subsection is further divided into (1) active borrowers with secured loans and (2) inactive borrowers or active borrowers with unsecured loans.

The FSA treats SAAs as unsecured loans. FSA procedures state that "If the borrower cannot obtain satisfactory financing to pay the SAA recapture, the amount to be recaptured will be identified on a new promissory note as a non-program loan at ineligible rates and terms." 7 C.F.R. § 1951.914(c). If the borrower is able to pay the recapture amount, payment is due within 180 days. These procedures clearly evidence an intent to treat the recapture owed under an SAA as separate from amounts due under an associated farm loan and is, therefore, unsecured.

Since the SAA is an unsecured loan, it is addressed by 7 C.F.R. § 1951.558(c)(2). The subsection states that when unauthorized assistance is found, the local FSA agent will "request the advice of [the Office of General Counsel] on pursuing legal action to effect the collection." The FSA had no power to rewrite the SAA under its own regulations governing unauthorized assistance and must instead pursue the matter in an adjudicative forum.

⁵ The Viers argue that the SAA was not a loan servicing action, and therefore, not within the scope of 7 C.F.R. § 1951.551, *et seq.* However, SAAs fall under the statutory heading "Debt restructuring and loan servicing," they are treated as such by agency regulations, and they are clearly meant to work in close association with other servicing actions. *See* 7 U.S.C. § 2001.

The FSA argues that the adjustment is allowed under 7 C.F.R. § 780.11(a). The section states that the agency may "correct all errors in entering data . . . and the results of the computations or calculations made pursuant to the contract or agreement." However, the plain language of section 780.11(a) evidences an intent not to correct interpretive mistakes such as the one in question, but instead, to correct simple errors in data entry, typographical mistakes, and calculation mistakes (such as addition errors). Thus, the Court finds that the section is inapplicable.

V. CONCLUSION

The FSA acted without authority in adjusting the original valuation of the Viers property. The FSA's failure to follow its own binding regulations is a reversible abuse of discretion.

The following is HEREBY ORDERED:

1. The FSA's June 9, 1999, determination is reversed;
2. The SAA and all terms contained within, entered into between the Viers and the FSA on May 18, 1989, is legally enforceable as written;
3. The FSA is only entitled to repayment of \$17,700 for appreciation under the terms of the SAA; and
4. Issues involving attorneys fees and costs should be addressed to the Court in a separate motion with time for resistance and reply.

Dated this 10th day of July, 2000.


ROBERT W. PRATT
U.S. DISTRICT JUDGE

