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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,	*	4-99-CV-90431
Plaintiff,	*	
v.	*	
DANIEL GLICKMAN, Secretary of the United States Department of Agriculture,	*	MEMORANDUM OPINION AND ORDER
Defendant.	*	

Before the Court is Plaintiff's Motion for Attorneys [sic] Fees and Expenses (Clerk's #23) and Plaintiff's Renewed Motion for Attorney's Fees and Expenses and Amended Motion for Attorney's Fees and Expenses (Clerk's 25) (collectively referred to as "motion for attorney's fees"). Defendant resisted Plaintiff's motion for attorney's fees. The Court will deny Plaintiff's motion for attorney's fees.

I. Background

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.

In 1988, the Viers sought loan servicing through the FmHA[1] on the loans. Loan servicing is available to individuals who are experiencing difficulty paying their FmHA loans.

[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.

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The Viers' loan servicing consisted of debt restructuring, including a debt write-down. As a condition of receiving a write-down, 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 $8,000 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.

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 Farm Service Agency ("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 that they would be responsible for

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 then appealed the agency decision to this Court under the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* ("APA"). On July 10, 2000, this Court reversed the agency's decision, holding that the FSA is only entitled to repayment of $17,700 for appreciation under the terms of the SAA. The Viers now move for attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA").

II. Discussion

The EAJA provides that "a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A) (West, WESTLAW through P.L. 106-213). The issues in this case are whether the government's position was substantially justified, and, if not, whether awarding attorney's fees would be unjust under these circumstances.

The FSA bears the burden of proving that its position was substantially justified. Substantially justified does not mean "'justified to a high degree,' but rather 'justified in substance or in the main'–that is, justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). In other words, the FSA must show more than that its position was merely "marginally reasonable," rather, it must show that its position was "clearly reasonable, well founded in law and fact, solid though not necessarily correct." *S.E.C. v. Kluesner*, 834 F.2d 1438, 1440 (8th Cir. 1988) (citation omitted); *see also Pierce*, 487 U.S. at 565 (noting that the formulation of "substantially justified" it adopts is no different than the "reasonable both in law and fact" formulation that Courts of Appeals have adopted) (citations omitted).

The FSA was not substantially justified in its position. In *Friends of Boundary Waters Wilderness v. Thomas*, 53 F.3d 881, 885 (8th Cir. 1995), the court held that the government was not substantially justified when its interpretation of the word "feasible" was overly restrictive in view of two previous Supreme Court interpretations of the word, contrary to the clear congressional intent, and contrary to the plain meaning of the word. The plain language and clear intent of the FSA regulations did not give the FSA the power to adjust the security amount in the SAA agreement. FSA regulation 7 C.F.R. § 1951.558(c)(2) provides that when unauthorized assistance is found, the local FSA agent should "request the advice of [the Office of General Counsel] on pursuing legal action to effect the collection." FSA regulation 7 C.F.R. § 780.11(a) provides 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." The Court held that "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)." *Viers v. Glickman*, No. 4-99-CV-90431, slip op. at 7 (S.D. Iowa July 10, 2000). Further, 7 C.F.R. § 1951.558(c)(2) seems to clearly direct the FSA to pursue legal action in an adjudicative format when unauthorized assistance is found rather than simply rewrite the SAA agreement.

While there is no case law interpreting these regulations, as there was in *Friends of Boundary Waters Wilderness*, the basic principles of contract law provide a basis for judging the reasonableness of the FSA's interpretation. Restatement (Second) of Contracts § 151 (1979) states that "[a] mistake is a belief that is not in accord with the facts." This definition of mistake includes legal mistakes. *See* Restatement (Second) of Contracts § 151, comt. b (1979). Restatement (Second) of Contracts § 153 (1979) provides,

> Where a mistake of one party at the time a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performances that is adverse to him, the contract is voidable by him if he does not bear the risk of the mistake under the rule stated in § 154, and
>
> (a) the effect of the mistake is such that enforcement of the contract would be unconscionable, or
>
> (b) the other party had reason to know of the mistake or his fault caused the mistake.

There is no doubt that the FSA specialist made a mistake in determining the security amount on the Viers' SAA agreement and that the mistake had a material effect on the agreement. However, the mistake in the security amount does not seem to rise to the level of unconscionable. The FSA admits that the Viers would have been qualified for the write-down even if the security amount was determined correctly. Complaint for Review of Agency Action, Declaratory Judgment and Other Relief ¶ 45; Answer and Affirmative Defenses ¶ 1. And the FSA has failed to show how the difference in security amounts would have affected the loan servicing the Viers received. Nor does it seem reasonable that the Viers should have realized the

FSA's mistake when the FSA specialist was the one who made it. To put it differently, it certainly seems reasonable for the Viers to take the FSA at its word when it tells them what it requires of them to receive loan servicing from the FSA (which was interpreting its own regulations). Thus, it does not seem that the FSA's interpretation of their power under the regulations was in accord with the basic principles of contract law. Accordingly, the Court cannot say that the FSA's interpretation of the pertinent regulations was clearly reasonable and well founded in law.

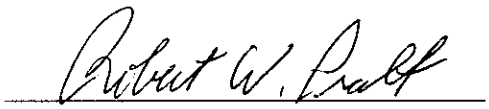
Although the FSA was not justified in correcting its mistake in the SAA agreement, it would nonetheless be unjust to make it pay twice for the mistake by awarding the Viers attorney's fees. The EAJA "explicitly directs a court to apply traditional equitable principles in ruling upon an application for counsel fees by a prevailing party." *United States Department of Labor v. Rapid Robert's Inc.*, 130 F.3d 345, 347 (8th Cir. 1998) (internal quotations omitted). In *Rapid Robert's Inc.*, the court held that the district court erred in failing to find special circumstances that made an award of attorneys' fees unjust where the employer escaped penalties for clear violations of a statute because the regulations it was charged under were improperly promulgated. *Id.* at 348-349. The Viers are asking the Court to award it $19,284.88 in attorney's fees. Renewed Mot. for Atty's Feesand Expenses and Amended Mot. for Atty's Fees and Expenses, Ex. B. However, but for the FSA's mistake, the Viers would have had to pay back $23,000 more than they are now obligated to pay back. As in *Rapid Robert's Inc.*, Plaintiffs here have also already received their windfall. *Id.* Any argument that the Viers may not have entered into the SAA agreement if the security amount had been different is unfounded in the record. The Viers do not seem as if they were in a position to bargain with the FSA. The Court will not therefore award the Viers attorney's fees.

III. Conclusion

Plaintiff's motion for attorney's fees is **denied**.

IT IS SO ORDERED.

Dated this 28th day of November, 2000.



ROBERT W. PRATT,
U.S. DISTRICT JUDGE