



United States
Department of
Agriculture

Office of the
Assistant Secretary
for Civil Rights

Center for Civil
Rights Enforcement

1400 Independence
Avenue SW

Washington, DC
20250

UNITED STATES DEPARTMENT OF AGRICULTURE
Office of the Assistant Secretary for Civil Rights

John W. Boyd, Jr.,
Complainant

v.

Sonny Perdue,
Secretary
Department of Agriculture
Agency

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) Program Complaint No.: FSA-19-8204
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Final Agency Decision on Allegations of Noncompliance

I. Introduction

Pursuant to the Alternative Dispute Resolution Act of 1996 (Public Law 104-320), and the United States Department of Agriculture (USDA) implementing regulation, Departmental Regulation (DR) 4330-003,¹ the Office of the Assistant Secretary for Civil Rights (OASCR) hereby renders the following determination on the Complainant's allegation of noncompliance with his Settlement Agreement (SA) dated November 19, 1999.

II. Issue Presented

Whether Farm Service Agency (FSA) officials violated the SA when they failed to provide Complainant a farm in USDA inventory property from July 18, 2018 to February 1, 2019.

III. Procedural History

Date of Settlement Agreement:	November 19, 1999
Date(s) of Alleged Noncompliance:	July 18, 2018 – February 1, 2019
Date of Complaint:	February 27, 2019
Date of Acceptance:	April 15, 2019
Dates of Investigation:	July 29, 2019 – August 1, 2019
Date of Report of Investigation:	October 9, 2019

¹ DR 4330-003, paragraphs 7(j) and 7(j)(2) states that OASCR is responsible for monitoring implementation of SAs and ensuring compliance with their terms and conditions. If the complainant believes that an agency has failed to comply with the terms of the SA, the complainant shall notify OASCR, in writing, of the alleged non-compliance within 30 days of when the complainant knew or should have known of the alleged non-compliance.

IV. Statement of Facts

The USDA Rural Development/Farm Services Agency (USDA-RD/FSA) resale web site provides current information about single-family homes, multifamily homes, farms, and ranches for sale by the U.S. Federal Government. The website was designed to provide information regarding properties owned by the government for public sale. These previously owned properties are for sale by public auction or other method depending on the property. The properties are located throughout the United States including our Commonwealths and Territories in the Pacific and the Caribbean. After finding a USDA-RD/FSA home or farm property of interest on the resale web site, individuals are to contact their local RD or FSA servicing office to obtain the most current and accurate information regarding the status of the home/farm property, and to determine eligibility for potential program benefits. Depending on individual's circumstances and the status of the property listed, the method of bidding and ultimate purchase of property may vary.²

Complainant resides in and is a farmer in Mecklenburg County, Virginia. Since 1984, Complainant has participated in FSA's Farm Loan Programs and has been approved for and received farm ownership and operating loans. A review of Complainant's complaint history shows, he has filed several program discrimination complaints related to his FSA loans over the years, which eventually resulted in two Settlement Agreements (SA) which were executed on May 20, 1997, and November 19, 1999. (ROI, pg. 5)

On November 19, 1999, Complainant and USDA entered into a SA based on all claims of Complainant's 1990 discrimination complaints.³ The SA required USDA provide Complainant with priority consideration, on a one-time basis for the purchase, lease, or other acquisition of inventory property located in the Commonwealth of Virginia. The SA also stated Complainant must exercise his right to such priority consideration in writing and within 5 years of the date the SA was signed. (ROI, pgs. 214-216)

On July 18, 2018, Complainant emailed the Farm Loan Manager (FLM) (race: White) in FSA's Siskiyou County, California office, requesting additional information on a property listed on FSA's inventory property website. (ROI, pg. 326)

On July 24, 2018, the FLM responded to Complainant's email inquiry with a phone call. During the call, the FLM provided Complainant with general information on the property in Lassen County, California and a general outline of the sale process. Also, the FLM added Complainant's name and email address to the distribution list to ensure he received the notice of sale of property once it was published. (ROI, pgs. 325, 306-307)

² For more information about USDA-RD/FSA properties, see: <https://properties.sc.egov.usda.gov/resales/public/home>

³ Due to age, we do not have access to Complainant's complaints filed in the 1990's against USDA.

On the same day, Complainant emailed the FLM requesting physical address and name of previous owner for the California property he was interested in. (ROI, pg. 324)

On July 27, 2018, the FLM responded to Complainant's email by stating she did not have access to a physical address. The FLM recommended Complainant contact the County Assessor. Also, the FLM expressed she would try and find out information and let Complainant know if she could locate the physical address. (ROI, pg. 324)

On February 26, 2019, Complainant visited the Mecklenburg County FSA office and received assistance from the Farm Loan Officer (FLO) on outstanding Farmers Home Administration liens on his properties. (ROI, pgs. 239-240)

On February 27, 2019, Complainant filed a program discrimination complaint against FSA.⁴ (ROI, pgs. 13-17)

On March 11, 2019, Complainant emailed the FLM to see if she had found any additional information regarding the property of interest. (ROI, pg. 323)

On August 25, 2019, Complainant emailed the FLM again to see if she had found any additional information regarding the property of interest. (ROI, pg. 331)

On September 6, 2019, the FLM responded to Complainant's email by informing him that property he was interested in was still in the FSA inventory. According to the FLM, FSA was still working through the steps to prepare the property for sale as a surplus property. (ROI, pg. 323)

V. Applicable Legal Standards

A settlement agreement is a contract, and its construction is a question of law. See *Lary v. U.S. Postal Serv.*, 472 F.3d 1363, 1367 (Fed.Cir.2006). As such, the formation, construction, and enforceability of a settlement agreement are governed by contract law. *Carr v. Runyan*, 89 F.3d 327, 331 (7th Cir.1996). Therefore, in order for a complainant to prevail, he/she must show material noncompliance with the terms of the settlement agreement. See *Gilbert v. Dep't of Justice*, 334 F.3d 1065, 1071 (Fed.Cir.2003) ("A party breaches a contract when it is in material noncompliance with the terms of the contract.")

"A breach is material when it relates to a matter of vital importance, or goes to the essence of the contract." *Thomas v. Dep't of Housing & Urban Dev.*, 124 F.3d 1439, 1442 (Fed.Cir.1997); Restatement (2d) of Contracts § 241 (1981) (A material breach is one that will, or may, defeat the object or underlying purpose of the contract.). A purely technical and immaterial breach of a contractual obligation will generally be insufficient to warrant contract rescission. See, e.g., *Sahadi v. Continental Illinois Nat. Bank and Trust Co. of Chicago*, 706 F.2d 193, 196-198 & n. 2 (7th Cir.1983) Restatement (2d) of

⁴ Complaint #19-8204.

Contracts §§231– 60 (1981) (A minor breach will not generally give rise to a cause of action on the entire contract).

A determination as to whether a breach is material “is a complicated question of fact, involving an inquiry into such matters as whether the breach worked to defeat the bargained-for objective of the parties or caused disproportionate prejudice to the non-breaching party, [and] whether custom and usage considers such a breach to be material.” *Sahadi*, 706 F.2d at 196. These factors, however, do not detract from the fundamental materiality inquiry: whether the parties would have entered into the contract without the particular provision at issue. *Id.* at 714; see also *Francorp, Inc. v. Siebert*, 126 F.Supp.2d 543, 547 (N.D.Ill.2000) (“The materiality of a breach depends on the ‘inherent justice of the matter,’ and on whether the matter, in respect to which the failure of performance occurs, is of such a nature and of such importance that the contract would not have been made without it.”) In cases involving allegations of breach of a settlement agreement, the burden is always placed on the party alleging breach to establish that a breach has occurred. *Porter v. United States Postal Service*, EEOC Appeal No. 01A54699 (December 20, 2005).

A breach of contract claim requires two components: (1) an obligation or duty arising out of the contract and (2) factual allegations sufficient to support the conclusion that there has been a breach of the identified contractual duty. *San Antonio Housing Auth. v. United States*, 143 Fed. Cl. 425, 470 (2019)

VI. Findings and Conclusion

Priority Consideration for Inventory Property

On November 19, 1999, USDA and Complainant entered into a SA for the purpose of resolving Complainant’s program discrimination claims through a mutually acceptable voluntary agreement. Per the SA, USDA agreed to provide Complainant with priority consideration, on a *one-time basis* for the purchase, lease, or other acquisition of inventory property in the Commonwealth of Virginia. The SA required Complainant to exercise this right to such priority consideration in writing and *within 5 years of the date* of the signed SA.

Complainant asserts he searched FSA’s property inventory website, but the information available was always out of date. Also, Complainant states he emailed FSA’s Outreach Director and the point of contact for FSA’s inventory property. However, Complainant noted his emails were never responded to in a timely manner. Complainant asserts he requested an extension from USDA officials of the 5-year priority property consideration stipulated in the SA. Complainant noted USDA’s Assistant Secretary for Civil Rights advised him to continue his ongoing efforts to request a farm out of the inventory and contact FSA. (ROI, pg. 103) We note Complainant did not provide any specific details or evidence regarding his efforts to exercise his right to priority consideration for an FSA inventory property. Despite his assertions, Complainant’s

current allegation does not support a finding of FSA's material noncompliance with the terms of the SA.

According to the FLM, Complainant contacted her about a Lassen County, California property listed in FSA's inventory website on July 18, 2018. On July 24, 2018, the FLM responded to Complainant by providing him with general information about the property and an outline of the sale process. In addition, the FLM emailed Complainant maps of the property location and added him to FSA's distribution list to ensure he received the Notice of Sale once published. On the same day, Complainant sent a subsequent email requesting the physical address of the property. On July 27, 2018, the FLM informed Complainant she was unable to locate a specific address for property and referred him to the County Assessor's office for additional information. The FLM explained the property remained in FSA's inventory, and Complainant was to be notified once a Notice of Sale was prepared and published. (ROI, pgs. 118, 313, 323-324)

The Mecklenburg County FLO stated he had no knowledge of Complainant's request for inventory property and was not aware of any other FSA personnel who may have assisted Complainant with his request. According to the FLO, the process for requesting or purchasing FSA inventory property can be found in Part 21 of the FSA Handbook 5-FLP. Additionally, the FLO indicated no real estate inventory property was available between July 18, 2018 and February 2019 for the Mecklenburg FSA Farm Loan Program office. (ROI, pgs. 242-243)

FSA Handbook 5-FLP Part 21 states when FSA acquires inventory property and the authorized agency official confirms that the property satisfies the applicable general policies, the authorized agency official initiates the sale of the property. For most inventory property, the authorized agency official must begin advertising the property for sale within 15 calendar days of title acquisition. FSA offers inventory property to beginning farmers or socially disadvantaged farmers before considering sale of the property to the general public.⁵

While we agree Complainant was entitled to priority consideration to USDA's property inventory, he did not utilize the benefit within the timeframe and region covered by the SA. According to the SA, Complainant was required to exercise his right to such priority consideration in the Commonwealth of Virginia within 5 years of the date the SA was signed. The SA between USDA and Complainant was signed on November 19, 1999. As such, Complainant would have had until November 19, 2004, to exercise his entitlement to priority consideration. However, Complainant was seeking priority consideration on July 18, 2018, well outside of the allotted timeframe set by the SA. Complainant noted he attempted to obtain an extension of the 5-year timeframe. However, nothing in the record shows the Agency approved his extension request. Additionally, the SA stipulated Complainant would have priority consideration for FSA

⁵ For more information on the sale of FSA's inventory property, see: https://www.fsa.usda.gov/Internet/FSA_File/5-flp.pdf

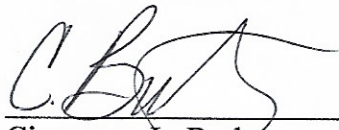
properties in Virginia. The property in question associated with the instant allegation of breach of settlement was in California.

The compromise of any matter is valid and binding, not because it is the settlement of a valid claim, but because it is the settlement of a controversy. *Weade v. Weade*, 153 Va. 540, 150 S.E. 238 (1929) Here, after the agreement was executed, the Agency was under no obligation to enlarge the timeframes or geographic areas because Complainant did not exercise his priority consideration as specified in the SA. Therefore, we find there was no material breach of contract.

Conclusion

Based on our review of the record and the documentation submitted by FSA and the Complainant, we conclude that the FSA complied with the terms of the Settlement Agreement.

No person shall be subject to reprisal or harassment for filing a discrimination complaint against USDA; participating in or contributing to the identification, investigation, prosecution, or resolution of civil rights violations by an agency of USDA or by a recipient of Federal financial assistance from USDA; or otherwise aiding or supporting the enforcement of civil rights laws, rules, regulations or policies applicable to USDA programs.



Cinnamon L. Butler
Director, Program Adjudication Division
Center for Civil Rights Enforcement



Date