

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

DNS-FCIC Docket No. 06-0002  
DNS-FCIC Docket No. 06-0003

In re: SCOTT INSURANCE AGENCY  
WALDO RUSHY SCOTT

Respondents

**DECISION AND ORDER**

This decision involves two appeals of the decisions of Eldon Gould, the Debarring Official, Risk Management Agency, Federal Crop Insurance Corporation, (hereinafter "FCIC"), United States Department of Agriculture to debar both the Scott Insurance Agency and Waldo Rushy Scott for a period of two years. Prior to the decisions, through their attorney, the Respondents submitted written material to the Debarring Official and requested and received an informal hearing before the Debarring Official in Washington, D.C. on January 19, 2006 at which time the Respondents were afforded an opportunity to explain their position. The letters imposing the debarments were both dated April 4, 2006 and the appeals were commenced by a letter from the Respondent's attorney, Joshua C. Bell, Esquire, Kirbo, Kendrick & Bell of Bainbridge, Georgia dated May 11, 2006. A subsequent letter from Mr. Bell dated May 30, 2006 was sent to clarify that both debarment actions were being appealed.

The Respondent, Scott Insurance Agency, (hereinafter "SIA"), maintains its principal place of business at 1705 North Pearl Street, Jakin, Georgia and has a mailing address of Post Office Box

179, Jakin, Georgia 39861. It has sold crop insurance since 1999, and is licensed to do so in both Georgia and Florida. SIA is an independent insurance agency, as it writes policies for a variety of crops for different insurance carriers. The policies have covered a number of crops including apples, corn, cotton, nursery stock, onions, peanuts, pecans, wheat, and clams, the last of which is pertinent to the issues pending before me. Tab 6, Exhibit 5.

Waldo Rushy Scott (hereinafter “Scott”) is a Georgia resident whose business mailing address is the same as that of SIA. He is licensed as an insurance agent in both Georgia and Florida and owns and operates SIA. Tab 4 at 2. He has sold crop insurance policies since 1999 and attended all of the Risk Management Agency (“RMA”) sponsored training sessions on the Cultivated Clam Pilot Program. Tab 4 at 10.

The appeals which have been advanced by Scott and SIA contain no hermeneutic specifics and merely assert that the Debarring Official’s decisions are not in accordance with the law, are not based upon the applicable standard of evidence, are arbitrary and capricious, and are an abuse of his discretion. Although Judge Clifton’s Order of May 23, 2006 setting forth deadlines and procedures would have permitted replies to the Debarring Official’s filings, the Respondents failed to avail themselves of those opportunities and have filed no subsequent pleadings other than the Notice of Appearance and the requested clarification.

The grounds for debarment are found in 7 C.F.R. § 3017.800 and include:

- (b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—
  - (1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;
  - .....
  - (3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

.....

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

The debarment actions taken by Federal Crop Insurance Corporation against SIA were prompted by an investigation initiated following receipt of information by the Valdosta Regional Servicing Office from two sources indicating that in September of 2001, SIA had solicited clam insurance policies and premiums from clam growers in Franklin County, Florida, a county not covered by the FCIC's crop insurance program. Tab 6, Executive Summary. SIA's solicitation was made in the form of a letter signed by Scott and an insurance packet which contained a copy of the clam insurance provisions, two pages of quick quote estimates, a partially completed application, a copy of the county actuarial table, clam policy special provisions and a copy of FCI-35 Coverage and Rates 2002 and Succeeding Years. The quick quote estimates, the copy of the county actuarial table and the FCI-35 each had been altered to reflect that the material was applicable to Franklin County.

Clams were the first aquatic crop insurance product offered by FCIC. The Cultivated Clam Pilot Program announced on August 20, 1999 provided coverage for clam producers who harvested hard-shell clams in Massachusetts, South Carolina, Virginia and Florida. In Florida, federal clam crop insurance coverage for the 2002 crop year was available only in the four counties of Brevard, Dixie, Indian River, and Levy. Tab 4 at 6, 10. Federal crop insurance for clams was not available in Franklin County, Florida during the period in question.

The essentially identical administrative records in the two cases are each nearly three inches thick and consisting of 21 tabs which include the investigative report, extracts of regulatory

provisions, FCIC's Standard Reinsurance Agreement (SRA), reports of interviews, the transcripts of both Senior Compliance Investigator R. F. Upton's January 27, 2004 interview of Scott and the informal hearing on January 19, 2006 attended by Scott, Joshua C. Bell, the attorney for both SIA and Scott, the debarring official and other USDA personnel, copies of the solicitation materials, correspondence between the parties, and other material submitted by the Respondent. Administrative Records, Tabs 1-21. The solicitation mailing to clam growers in Franklin County, Florida of approximately 40 insurance and application packets containing unauthorized and altered material by SIA was admitted by Scott who initially indicated that he assumed responsibility for the action, but claimed that SIA's mailing was either unauthorized or done by mistake. Tab 4 at 11-13, 17-18; Tab 16 at 5.

After careful consideration of both of the administrative records and the pleadings in the respective files, the following Findings of Fact and Conclusions of Law are made.

### **FINDINGS OF FACT**

1. SIA is an unincorporated insurance agency having its principal office at 1705 North Pearl Street, Jakin, Georgia with a mailing address of Post Office Box 179, Jakin, Georgia 39861, and is licensed to do business in Georgia and Florida.

2. SIA has participated in the federal crop insurance program since 1999 and written federal crop insurance policies for a variety of crops, including apples, corn, cotton, nursery stock, onions, peanuts, pecans, wheat, and clams.

3. Waldo Rushy Scott is a resident of Georgia and has the business mailing address of Post Office Box 179, Jakin, Georgia 39861. He is licensed as an insurance agent in both Georgia and Florida and is the sole owner of and operates SIA.

4. On or about September 26, 2001, SIA mailed approximately 40 insurance solicitation packets containing altered federal documents to ineligible clam producers located in Franklin County, Florida, a county not eligible for clam federal crop insurance coverage.

5. SIA's solicitation material included a letter signed by Scott and a packet containing a copy of the clam insurance provisions, two pages of quick quote estimates, a partially completed insurance policy application, a copy of the county actuarial table, clam policy special provisions and a copy of FCI-35 Coverage and Rates 2002 and Succeeding Years. The quick quote estimates, a copy of the county actuarial table and the FCI-35 each were altered so as to reflect that the material was applicable to Franklin County.

5. SIA and Scott had attended the RMA sponsored training sessions on the Cultivated Clam Pilot Program and were aware that Federal clam crop insurance was available in Florida only in the four counties of Brevard, Dixie, Indian River and Levy and not in Franklin County.

6. Neither FCIC nor the insurance provider authorized the alteration of the materials sent to the clam producers. The alteration of the materials was done at the direction of Scott, the sole owner, agent for and operator of SIA and was done willfully, with full knowledge that Clam producers in Franklin County, Florida were not eligible for federal crop insurance coverage.

7. Neither Scott nor SIA notified FCIC, the insurance provider, or any of the 40 recipients of the solicitation materials that the materials were informational only, that the materials had been mailed in error, or that the solicitation was being withdrawn.

8. No federal clam crop insurance policies were written for any of the 40 clam producers receiving SIA's solicitation materials in Franklin County, Florida, the area not covered by the clam federal crop insurance program.

9. The receipt of incorrect and altered insurance solicitation materials sent to clam producers who were not eligible for federal clam crop insurance, while not creating an actual financial loss to FCIC, nonetheless was detrimental to the integrity of the FCIC program and jeopardized public trust in the integrity of the clam insurance program.

10. During the course of the investigation and the informal hearing, Scott and employees of SIA provided inconsistent accounts of how the solicitation was made, recanting in part the nature of their participation and their acceptance of responsibility made during the interviews with the Senior Compliance Investigator R.F. Upton.

### **CONCLUSIONS OF LAW**

1. SIA, as a participant in the FCIC program, agreed to the provisions of the Standard Reinsurance Agreement (“SRA”) and violated Sections V. E and V.G.2.g of the SRA by failing to use and follow the crop insurance contract, standards, procedures and instructions as approved by FCIC in the sales of eligible crop insurance contracts by offering a contract to an ineligible clam producer using FCIC approved forms and documents which had been altered without FCIC approval or authorization.

2. The alteration of the FCIC approved preprinted forms by inserting the name of a county not eligible for the federal clam crop insurance program was a willful act.

3. The conduct of the employees of SIA documented in the Administrative Record in making the alterations and the mailing the letter and packet to ineligible clam producers are imputed to Scott as the sole owner and operator of SIA and amply support the debarment actions of both SIA and Scott as set for in the Debarring Official’s letters of April 4, 2006 imposing two year debarment of both Respondents.

4. As I agree with so much of the decision of the Debarring Official that the Respondents violated the terms of a public agreement or transaction so seriously as to affect the integrity of an agency program as set forth in the letter of April 4, 2006, I conclude that his decisions are in accordance with the law and regulations, are based upon the applicable standard of evidence, are not arbitrary or capricious and do not constitute an abuse of the Debarring Official's discretion in either case.

Accordingly, the following Order is entered.

**ORDER**

It is **ORDERED** that the decisions of Eldon Gould, the Debarring Official, in his debarment letters of April 4, 2006 are **AFFIRMED** as to Scott Insurance Agency and Waldo Rushy Scott.

Copies of this Decision shall be placed in each of the respective files and served upon the parties and the Debarring Official by the Hearing Clerk's Office.

Done at Washington, D.C.  
August 7, 2006

---

**PETER M. DAVENPORT**  
Administrative Law Judge

Copies to: Joshua C. Bell, Esquire  
Donald A. Brittenham, Jr.  
Eldon Gould

Hearing Clerk's Office  
U.S. Department of Agriculture  
1400 Independence Avenue SW  
Room 1031, South Building  
Washington, D.C. 20250-9203  
202-720-4443  
Fax: 202-720-9776

