UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: May 12, 2009

CBCA 1455-FCIC

In the Matter of MICHAEL HAT, a/k/a MICHAEL HAT FARMING COMPANY

D. Clarke Sugar and Merle C. Meyers of Meyers Law Group, P.C., San Francisco, CA, counsel for Appellant.

Kimberley E. Arrigo, Office of the General Counsel, Department of Agriculture, Washington, DC, counsel for Federal Crop Insurance Corporation.

Before Board Judges **BORWICK**, **DRUMMOND**, and **KULLBERG**.

KULLBERG, Board Judge.

On December 17, 2008, this appeal was filed by the trustee in bankruptcy (trustee) for Michael Hat, a/k/a Michael Hat Farming Company (MHF).[1] The Board directed the parties to brief the issue of jurisdiction in that this appeal did not appear to involve a dispute between an insurance company that was a party to a standard reinsurance agreement (SRA) and the Department of Agriculture's Risk Management Agency (RMA). The Government subsequently moved to dismiss this appeal for lack of jurisdiction in that MHF was not an insurance company that was a party to an SRA. There is no dispute that MHF is not an insurance company, but rather, MHF is a California grape producer that has filed claims against its insurer, which is a party to an SRA. In opposing the Government's motion, the trustee asserts that the Board should hear this appeal in that it has been unable to obtain a resolution of its claims with the RMA. We dismiss this appeal for lack of jurisdiction.

[1] The bankruptcy proceeding is before the United States Bankruptcy Court, Eastern District of California.

Background

On July 20, 2001, MHF filed a bankruptcy petition under Chapter 11 of the federal bankruptcy code, 11 U.S.C. §§ 1101-1174 (2000). While operating as a Chapter 11 debtor-in-possession during 2002, MHF purchased several multiple peril crop insurance policies from American Growers Insurance Company (AGIC), which was a party to an SRA with the Federal Crop Insurance Corporation (FCIC). AGIC was organized under the laws of the state of Nebraska.

On November 22, 2002, AGIC was placed under an order of supervision by the director of insurance for the state of Nebraska. In an amendment to the SRA, which was executed by AGIC and the FCIC on January 23, 2003, the FCIC agreed to provide sufficient funds to assure that AGIC's insurance contracts would be properly serviced. In a letter dated January 10, 2005, from the RMA to the Nebraska Department of Insurance, the RMA advised that it would assume any claims placed against AGIC. On February 28, 2005, AGIC was liquidated. Subsequently, MHF submitted its insurance claims to the special deputy liquidator for AGIC, which denied the claims, and the claims were then submitted to the RMA. MHF has appealed to this Board the lack of any decision by the RMA regarding its claims.

Discussion

The issue before us is whether this Board has jurisdiction in an appeal regarding the claims MHF has brought against its insurance company, AGIC. In matters involving the Federal Crop Insurance Act, 7 U.S.C. §§ 1501-1524 (2000), this Board's authority under its Rules is limited to hearing disputes "between an insurance company that is a party to an SRA (or other reinsurance agreement) and the RMA, and the term 'appellant' means the insurance company filing an appeal." Rule 202(a)(1) (48 CFR 6102.202(a)(1) (2008)). An insurance company that is a party to an SRA can file an appeal with this Board under the following circumstances:

> (a) If the company believes that the Corporation has taken an action that is not in accordance with the provisions of the Standard Reinsurance Agreement or any reinsurance agreement with FCIC, except compliance issues, it may request the Deputy Administrator of Insurance Services to make a final administrative determination addressing the disputed action. The Deputy Administrator of Insurance Services will render the final administrative determination of the Corporation with respect to the applicable actions. All requests for a final

> administrative determination must be in writing and submitted within 45 days after receipt after the disputed action.
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> (b) With respect to compliance matters, the Compliance Field Office renders an initial finding, permits the company to respond, and then issues a final finding. If the company believes that the Compliance Field Office's final finding is not in accordance with the applicable laws, regulations, custom or practice of the insurance industry, or FCIC approved policy and procedure, it may request, the Deputy Administrator of Compliance to make a final administrative determination addressing the disputed final finding. The Deputy Administrator of Compliance will render the final administrative determination of the Corporation with respect to these issues. All requests for a final administrative determination must be in writing and submitted within 45 days after receipt of the final finding.
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> d) Appealable final administrative determinations of the Corporation under paragraph (a) or (b) of this section may be appealed to the Civilian Board of Contract Appeals in accordance with 48 CFR part 6102.

7 CFR 400.169 (2008). An appeal brought by any party other than those insurance companies that have executed an SRA with the FCIC will be dismissed. *See Crop Growers Insurance, Inc.*, AGBCA 98-171-F, 00-2 BCA ¶ 30,976, at 152,863-64. MHF is not an insurance company that is a party to an SRA, and this Board has no alternative but to dismiss this appeal in which the trustee seeks to pursue claims under MHF's insurance agreements with AGIC.

The trustee argues that "[g]iven the present circumstances, namely the liquidation of the AGIC, the only reasonable approach to ensure compliance with the legislative intent is to subrogate the Appellant to all rights of AGIC, including the right to bring its appeal to the CBCA . . . ." Appellant's Brief at 4. Subrogation is defined, generally, as "substitution of one person for another; that is, one person is allowed to stand in the shoes of another and assert that person's rights . . . ." *Black's Law Dictionary* 1468 (8th ed. 2004). "Under the common law, the liability of the reinsurer is solely to the reinsured and not to the original insured." *Williams Farms of Homestead, Inc. v. Rain and Hail Insurance Services, Inc.*,

121 F.3d 630, 633 (11th Cir. 1997) (citing 1 Eric Mills Holmes & Mark S. Rhodes, *Holmes's Appleman on Insurance* § 2.15 (Eric Mills Holmes ed., 2d ed. 1996)). The SRA was a reinsurance agreement between the FCIC and AGIC, which established legal rights between those two parties only, and it did not provide for substituting AGIC with another party such as MHF. Neither MHF nor its trustee, consequently, can assert any right to bring an appeal on behalf of AGIC.

Although the trustee seeks relief at this Board because MHF's claims against AGIC have not been resolved, this Board does not have jurisdiction over those claims. Resolution of any claims that MHF and its trustee have against AGIC, therefore, will have to be brought before the appropriate forum.

Decision

The appeal is **DISMISSED FOR LACK OF JURISDICTION**.

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H. CHUCK KULLBERG
Board Judge

We concur:

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ANTHONY S. BORWICK
Board Judge

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JEROME M. DRUMMOND
Board Judge