

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 0313

**THOMAS RAY DOUGLAS, JR.
D/B/A DOUGLAS FARMS**

VERSUS

LOUISIANA AGRICULTURE COMMODITIES COMMISSION¹

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 597,711, Section 23
Honorable William A. Morvant, Judge Presiding**

**Harry J. Philips, Jr.
Erin B. Sayes
Taylor, Porter, Brooks and
Phillips, L.L.P.
Baton Rouge, LA**

**Attorneys for
Plaintiff-Appellant
Thomas Ray Douglas, Jr.
d/b/a Douglas Farms**

**E. John Litchfield
Carey B. Daste
Berrigan, Litchfield, Schonekas,
Mann and Traina, LLC
New Orleans, LA**

**Attorneys for
Defendant-Appellee
Louisiana Agricultural Commodities
Commission**

BEFORE: PARRO, HUGHES,² AND WELCH, JJ.

Judgment rendered APR 10 2013

¹ Pursuant to LSA-R.S. 3:3403(A), and as noted by the defendant in its answer to plaintiff's petition for appeal to the district court, the defendant's proper name is "Louisiana Agricultural Commodities Commission."

² Justice Jefferson D. Hughes III is serving as judge ad hoc by special appointment of the Louisiana Supreme Court.

PARRO, J.

In a petition for judicial review of the final decision of a state agricultural commission, the district court affirmed the commission's denial of a corn producer's indemnity claim that resulted from a grain dealer's refusal to pay the producer in full for a delivery of corn. The corn producer appeals from the district court's adverse judgment, contending the district court legally and factually erred in affirming the agricultural commission's decision. We affirm the district court's judgment and issue this opinion in accordance with Rules 2-16.2(A)(5), (6), (8), and (10) of the Uniform Rules of Louisiana Courts of Appeal.

Pursuant to the Agricultural Commodity Dealer and Warehouse Law and applicable administrative rules,³ the Louisiana Agricultural Commodities Commission (LACC)⁴ operates the Grain and Cotton Indemnity Fund (the Fund). LSA-R.S. 3:3410.2. Monies in the Fund are used to reimburse a producer⁵ who sells grain⁶ to a licensed grain dealer⁷ and who is not fully compensated by the licensed grain dealer as a result of its insolvency.⁸ See LSA-R.S. 3:3410.2(C)(3), (F), and (G); La. Admin. Code 7:XXVII.195(A) and 201(A). A producer shall be eligible to receive indemnity payments from the Fund if: (1) the licensed grain dealer becomes insolvent after January 1, 2008, and (2) the licensed grain dealer, as a result of the insolvency, does not fully compensate the producer in accordance with a sale. LSA-R.S. 3:3410.2(F)(1) and (3).

³ Louisiana Revised Statutes 3:3401-3425 and La. Admin. Code 7:XXVII.191-217.

⁴ The Louisiana Agricultural Commodities Commission is a ten-member commission created within the Department of Agriculture and Forestry. LSA-R.S. 3:3403(A).

⁵ A "producer" means "the owner, tenant, lessee, or operator of land within this state who has an interest in or receives all or any part of the proceeds from the sale of agricultural commodities produced thereon." LSA-R.S. 3:3402(15).

⁶ "Grain" means "corn, wheat, oats, rye, soybeans, barley, and grain sorghum." LSA-R.S. 3:3402(9).

⁷ A "grain dealer" means "any person who purchases any agricultural commodities from producers or represents producers in the sale of agricultural commodities. ..." LSA-R.S. 3:3402(10); see La. Admin. Code 7:XXVII.193(A).

⁸ "Insolvency" means "the inability of a [grain dealer] to meet debts or discharge liabilities." La. Admin. Code 7:XXVII.193(A).

Any producer who wishes to assert a claim⁹ shall provide proof of a loss covered by the Fund to LACC. See La. Admin. Code 7:XXVII.201(B) and (C). Upon receipt of a proof of loss, LACC shall review the claim to determine whether it is covered under the indemnity program. See La. Admin. Code 7:XXVII.201(E). The burden of proof to establish the loss shall be upon the producer.¹⁰ Id.

LACC's decision to grant or deny a claim for payment from the Fund may be appealed to LACC itself by seeking an adjudicatory hearing to have the decision reconsidered in accordance with the Louisiana Administrative Procedure Act (the APA), LSA-R.S. 49:950 et seq. See La. Admin. Code 7:XXVII.205(A). Subsequent to such a hearing, LACC's decision on appeal is subject to judicial review, also in accordance with the APA. Id. Proceedings for review of a LACC decision are instituted by filing a petition in the Nineteenth Judicial District Court (Nineteenth JDC). See LSA-R.S. 49:964(B).¹¹ Upon review, the district court functions as an appellate court and may affirm, remand, reverse, or modify LACC's decision. See LSA-R.S. 49:964(G); Wild v. State, Department of Health and Hospitals, 08-1056 (La. App. 1 Cir. 12/23/08), 7 So.3d 1, 4. A final judgment of the Nineteenth JDC, rendered under the APA, is appealable to this court. See LSA-R.S. 49:965. On review of the district court's judgment, this court owes no deference to the district court's factual findings or legal conclusions. Wild, 7 So.3d at 4. Accordingly, this court has conducted its own independent review of the record in this case and applied the standards of review set forth in LSA-R.S. 49:964(G). See Id. at 5.

⁹ A claim shall be in writing and shall include: (1) name and address of the producer; (2) name of the grain dealer against whom the producer is asserting a loss; (3) nature of the relationship and transaction between producer and grain dealer; (4) the date of the loss; (5) the amount of the loss and how calculated; (6) a concise explanation of the circumstances that precipitated the loss; and (7) copies of those documents relied upon by the producer as proof of said loss. See La. Admin. Code 7:XXVII.201(B) and (C); also see La. Admin. Code 7:XXVII.193(A) (a "licensee," for purposes of the subchapter dealing with the Fund, includes a "grain dealer" as defined in LSA-R.S. 3:3402(10)).

¹⁰ See La. Admin. Code 7:XXVII.193(A) (a "claimant" means "a producer" as defined in La. Admin. Code 7:XXVII.101(A), by reference, which, in turn, contains the same general definition of "producer" found in LSA-R.S. 3:3402(15), set forth in footnote 4 of this opinion).

¹¹ Under LSA-R.S. 49:964(B), proceedings for judicial review are instituted by filing a petition in the district court of the parish in which the agency is located. The Nineteenth JDC is the district court in East Baton Rouge Parish, where LACC is domiciled. See LSA-R.S. 3:3403(I).

Thomas Ray Douglas, Jr. d/b/a Douglas Farms (Douglas) is the producer in this case who sought an indemnity payment from the Fund, because Central Louisiana Grain Cooperative, Inc. (Central), a licensed grain dealer, allegedly did not fully compensate Douglas for a sale of corn. Douglas had the burden of proving that Central became insolvent after January 1, 2008, and that as a result of the insolvency, Central did not fully compensate Douglas in accordance with the sale of corn. See LSA-R.S. 3:3410.2(F) and La. Admin. Code XXVII.201(E). LACC denied Douglas' indemnity claim when it was initially submitted. After an adjudicatory hearing to reconsider that decision, LACC again denied Douglas' claim. On appeal, the district court held a hearing on the matter, and by judgment dated October 17, 2011, affirmed LACC's decision, which had denied Douglas' indemnity claim.

Based on our independent review of the record, and applying the standards of review set forth in LSA-R.S. 49:964(G), we conclude, as did the district court, that the record does not sufficiently demonstrate, as is required by LSA-R.S. 3:3410.2(F)(3), that Central's failure to fully compensate Douglas for the sale of corn was as a result of Central's insolvency.

Accordingly, under Rules 2-16.2(A)(5), (6), (8), and (10) of the Uniform Rules of Louisiana Courts of Appeal, we affirm the district court's October 17, 2011 judgment that affirmed the Louisiana Agricultural Commodities Commission's decision denying the indemnity claim of Thomas Ray Douglas, Jr. d/b/a Douglas Farms. Costs of this appeal are assessed to Thomas Ray Douglas, Jr. d/b/a Douglas Farms.

AFFIRMED.