

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

SIDNEY D. HOTOPP,

Case No. 87-650-C

LOIS J. HOTOPP,

Chapter 7

Debtors.

ORDER ON OBJECTION TO TRUSTEE'S  
SALE OF PROPERTY OVER \$1,500.00

On January 5, 1988 an objection to trustee's sale of property over \$1,500.00 filed by the Farmer's Home Administration (FmHA) came on for telephonic hearing in Des Moines, Iowa. On October 29, 1987 the trustee filed a notice and report of sale of certain farm program payments. The FmHA objected to the proposed sale on November 5, 1987. Kevin R. Query, Assistant U.S. Attorney, appeared on behalf of the FmHA and trustee Donald F. Neiman was present. The parties dispute whether the FmHA has an interest in the farm program payments in question. They have submitted the matter on briefs and a stipulation of facts.

FACTS

The parties stipulate to the following facts:

1. On March 12, 1987 the debtors filed for relief under Chapter 7 of the Code.
2. On July 8, 1987 the FmHA filed a proof of claim

in the sum of \$38,246.09 as of March 12, 1987 with daily interest accrual thereafter of \$69.6714.

3. At the commencement of the case the FmHA held an interest in real estate owned by the debtors. This interest arose under a mortgage dated and filed with the Marshall County Recorder on May 29, 1979. The debtors, through the mortgage, extended rights to the FmHA in certain real estate and the following personal property:

[All rights, interests, easements, hereditaments and appurtenances thereunto belonging, the rents, issues, and profits thereof and revenues and income therefrom, all improvements and personal property now or later attached thereto or reasonably necessary to the use thereof, including, but not limited to, ranges, refrigerators, clothes washers, clothes dryers, or carpeting purchased or financed in whole or in part with loan funds, all water, water rights, and water-stock pertaining thereto, and all payments at any time owing to Borrower by virtue of any sale, lease, transfer, conveyance, or condemnation of any part thereof or interest therein--all of which are herein called 'the property.'

4. At the commencement of the case, the FmHA also held an interest in personal property owned by the debtors, including crops, farm tools and equipment, inventory, livestock, and all accounts, contract rights and general intangibles. The FmHA's interest in personal property owned by the debtors arose under security agreements dated June 7, 1985 and October 15, 1985. The FmHA perfected this interest by filing a financing statement with the Iowa Secretary of State on May 3, 1985.

5. The debtors signed contracts to participate in the 1986 Feed Grain Program (Program) administered by the Agricultural Stabilization and Conservation Service (ASCS) covering five distinct farm units. The debtors were entitled to receive at the commencement of their bankruptcy case deficiency payments on account of their participation in the Program. The dates of enrollment and nature of the benefits paid to the trustee in this case are delineated as follows:

<u>Unit</u>	<u>Enrollment</u>	<u>Payment</u>	<u>Amount</u>	
Farm 1	Signed up	03/14/86	PIK	\$ 424.84 face value
Operator	Approved	05/09/86	check	406.56
Farm 2	Signed up	03/14/86	PIK	836.63 face value
Operator	Approved	05/09/86	check	800.65
Farm 3	Signed up	03/14/86	PIK	1,938.15 face value
Operator	Approved	05/07/86	check	1,854.80
Farm 4	Signed up	03/14/86	PIK	3,809.19 face value
Owner	Approved	05/09/86	check	3,645.39
Farm 5	Signed up	03/14/86	PIK	5,902.90 face value
Operator	Approved	05/09/86	check	5,649.08
	Total cash:			\$12,356.48
	Commodity receipts:			<u>13,428.19</u>
	Grand Total:			<u>\$25,784.67</u>

6. The foregoing deficiency payments were paid to the trustee on October 1, 1987.

The court notes that the trustee proposes to sell the PIK certificates in question to the Farmers Elevator Company of Bondurant, Iowa for 105% of face value.

#### DISCUSSION

The FmHA first argues that the trustee has no right to

administer program payments because such payments are not

property of the estate. The FmHA also maintains that it has a secured interest in Program payments because the payments are proceeds of crops that would have been grown had it not been for the Program. The court examined and rejected identical arguments made by the FmHA in Matter of Hunerdosse, \_\_\_ B.R. \_\_\_ (Bankr. S.D. Iowa 1988). The Hunerdosse analysis and conclusions of law pertaining to these issues are dispositive in this case.

Likewise, the court has rejected the government's argument that it is entitled to set off payments owed by one agency against a debt the debtor owes another agency. See Matter of Mehrhoff, \_\_\_ B.R. \_\_\_ (Bankr. S.D. Iowa 1988). Accordingly, the court rejects the FmHA's administrative offset theory in this case.

Additionally, the court notes that the FmHA waived its right to offset under the facts of this case. The proof of claim filed by the United States Attorney for the FmHA on July 8, 1987 indicated that the claim was not subject to any setoff or counterclaim. The FmHA did not raise the setoff issue in this case until well after this date. See In re Britton, 83 B.R. 914 (Bankr. E.D. N.C. 1988) (FmHA's failure to assert right to a setoff in its proof of claim constituted waiver of right and right could not be reinstated by amending the proof of claim to specify such right).

Finally, pursuant to the reasoning and authority set forth in Matter of Halls, 79 B.R. 417 (Bankr. S.D. Iowa

1987), the court finds that the program payments are not subject to the FmHA's security interest.

CONCLUSION AND ORDER

WHEREFORE, based upon the foregoing discussion, the court finds that the FmHA does not have a right to the benefits in question.

THEREFORE, the FmHA's objection to trustee's sale of property over \$1,500.00 is overruled.

Signed and dated this 5th day of July, 1988.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE