

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11-5326

September Term 2011

1:08-mc-00511-PLF

1:10-cv-00737-PLF

Filed On: July 25, 2012

Charlie Edward Latham,

Appellant

All Plaintiffs, et al.,

Appellees

v.

Tom Vilsack, Secretary,

Appellee

Consolidated with 11-5334, 12-5019

BEFORE: Rogers, Tatel, and Garland, Circuit Judges

ORDER

Upon consideration of the motion to dismiss consolidated appeals or, in the alternative, for summary affirmance, the government's response in support of the motion to dismiss, the oppositions and corrected oppositions thereto, and the replies and supplement; and the motion and amended motions to exceed the page limits, it is

ORDERED that the amended motion to exceed the page limits be granted. The Clerk is directed to file the lodged response. Appellant Black Farmers and Agriculturalists Association, Inc. is cautioned that the court disfavors motions to exceed the limits. See D.C. Cir. Rule 27(h)(3) (motions to exceed page limits are granted "only for extraordinarily compelling reasons"). It is

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FURTHER ORDERED that the motion to dismiss be granted. Because appellant Latham received a determination of his claim under the Pigford v. Glickman consent decree, he is not a member of the settlement agreement approved by the district court in 10cv737 on October 27, 2011. See Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, § 14012, 122 Stat. 923, 1448 ("2008 Farm Bill") ("[a]ny Pigford claimant who has not previously obtained a determination on the merits of a Pigford claim may, in a civil action brought in the United States District Court for the District of Columbia, obtain that determination"). Alternatively, because appellant Latham failed to lodge any objection to the settlement before, during, or after the district court's fairness hearing, he waived any right he might have had to appeal the district court's approval of the settlement. See Devlin v. Scardelletti, 536 U.S. 1, 11 (2001) (unnamed class member can be deemed a party to the district court proceedings, and therefore have the "power" to appeal, only if the class member first lodges a timely objection to the settlement at the fairness hearing).

The appeal of the Black Farmers and Agriculturalists Association, Inc. is also dismissed because, despite having filed objections to the proposed settlement agreement and having appeared at the fairness hearing, appellant is not an "individual," and therefore cannot be a member of the settlement class. See Devlin, 536 U.S. at 10-11 ("the power to appeal is limited to ... class members who have objected during the fairness hearing"), 2008 Farm Bill, § 14012(a)(4) (settlement class definition is limited to individuals).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam