



Public Service Commission
State of North Dakota

COMMISSIONERS

Kevin Cramer
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August 12, 2010

Ms. Anita Schwartz
Clerk of the District Court
Cavalier County Courthouse
901 3rd Street
Langdon, ND 58249

**RE: CIVIL NO. _____
Organic Grain and Milling, Inc.
Grain Warehouse
Insolvency
PSC Case No. GE-10-327**

Dear Ms. Schwartz:


Enclosed for filing in the above proceeding please find the originals of:

1. Application for Appointment as Trustee.
2. Affidavit of Susan K. Richter.
3. Brief in Support of Application for Appointment as Trustee.
4. Notice of Application for Appointment as Trustee Under Rule 3.2.
5. Affidavit of Service by Certified Mail.
6. Proposed Order Granting Application for Appointment as Trustee.

After the notice period expires, if the Judge finds the Proposed Order Granting Application for Appointment as Trustee satisfactory, please have the Judge sign it and return a copy of the signed Order to us and we will provide Notice of Entry of Order and serve the parties of record.

If you have any questions, please do not hesitate to contact us. Thank you for your assistance in this matter.

Sincerely,


Illona A. Jeffcoat-Sacco (ID#03315)
Special Assistant Attorney General

Enclosures

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CAVALIER

NORTHEAST JUDICIAL DISTRICT

Public Service Commission,

Petitioner,

vs.

Organic Grain and Milling, Inc.,

Respondent

**APPLICATION FOR
APPOINTMENT AS TRUSTEE**

Civil No. _____

PSC Case No. GE-10-327

The North Dakota Public Service Commission (Commission) alleges as follows:

1. Organic Grain and Milling, Inc., a North Dakota corporation, which is authorized to do business in North Dakota, operated a grain warehouse at Clyde, North Dakota, and was licensed under North Dakota Century Code Chapters 60-02 and 60-04.
2. Organic Grain and Milling, Inc. operated its grain warehouse facility at Clyde, North Dakota under license number 1156.
3. As part of the licensing process, Organic Grain and Milling, Inc., filed a surety bond with the Commission as required by North Dakota Century Code § 60-02-09 in the amount of \$62,500 and identified as number FS8632211 with Great American Insurance Company, 580 Walnut St., Cincinnati, Ohio 45202, as surety.
4. On October 19, 2009, the Commission received notice that the warehouseman bond issued to Organic Grain and Milling, Inc. would be cancelled on January 27, 2010. The public grain warehouse license issued to Organic Grain and Milling, Inc. was suspended effective December 29, 2009 pursuant to North Dakota Century Code § 60-02-09.1. The company had until January 27, 2010, to procure and file an adequate bond. No bond filing was received.
5. On February 10, 2010, the Commission issued an order revoking public grain warehouse license no. 1156 issued to Organic Grain and Milling, Inc., for failure to

maintain adequate bond coverage as provided in North Dakota Century Code § 60-02-10.1 and ordering Organic Grain and Milling, Inc. to return public grain warehouse license number 1156 to the Commission.

6. In a letter dated June 17, 2010, Kodiak Farms, Ltd., informed the Commission that Organic Grain and Milling, Inc., defaulted in payments owed to Kodiak Farms, Ltd., under a Grain Sales Deferred Payment/Credit Sales Contract for the purchase and sale of 50,000 bushels of organic durum wheat within North Dakota. Kodiak Farms, Ltd., made demand to the Commission to recover the amounts owed to it by Organic Grain and Milling, Inc., from the Credit-Sale Contract Indemnity Fund.
7. On June 29, 2010, a representative of Organic Grain and Milling, Inc. advised the Commission, via e-mail, that the business no longer is operating and all assets have been liquidated and the proceeds distributed to growers.
8. The Commission was informed there may be outstanding obligations for unpaid claims for grain sold to Organic Grain and Milling, Inc., as a public warehouseman under North Dakota Century Code Chapter 60-02 for which bond protection is available under the provisions of North Dakota Century Code § 60-02-09 and for any credit-sale contracts for which protection is available from the credit-sale contract indemnity fund under North Dakota Century Code §§ 60-10-04 and 60-10-05.2.
9. The Commission was informed there may be accounts receivable available for grain sold prior to the filing of the claim that precipitated the insolvency.
10. Organic Grain and Milling, Inc. is insolvent under North Dakota Century Code Chapter 60-04, in that it is unable upon proper demand to make payment for grain purchased or make redelivery for grain delivered.
11. The Commission is legally entitled to be appointed trustee of the trust fund provided under North Dakota Century Code Chapter 60-04.

12. If there are noncredit sale claims, bond proceeds may be needed to redeem outstanding receipts issued by Organic Grain and Milling, Incorporated. North Dakota Century Code § 60-04-03.3 provides:

The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the commission when the commission believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. When it appears in the best interests of the receipt holders, the court may order the surety to deposit the penal sum of the bond, or so much thereof as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

13. Proceeds from the credit-sale contract indemnity fund may be needed to meet the licensee's obligations to any holders of credit-sale contracts. North Dakota Century Code § 60-10-05 provides:

Upon the insolvency of a licensed public warehouse or grain buyer and a declaration that the Public Service Commission serve as the trustee, the Public Service Commission shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

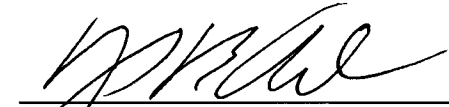
WHEREFORE the Public Service Commission respectfully requests:

1. That the Court declare Organic Grain and Milling, Inc., **INSOLVENT** within the meaning of North Dakota Century Code Chapter 60-04.
2. That the Court **APPOINT** the Public Service Commission as trustee of the trust fund under North Dakota Century Code § 60-04-03 for the purpose of allowing the Commission to take such action as may be required to secure its appointment as trustee under Chapter 60-04 of the North Dakota Century Code, issue and publish a notice of appointment and notice to file claims with the Commission, and enable the Commission to evaluate claims presented to it as prescribed by applicable North Dakota law, and prepare a draft Report and Recommendation of Trustee.


3. That the Court order Organic Grain and Milling, Inc. to turn over to the trustee all accounts receivable for grain sold to be used as an asset in the trust account.

Dated this 12th day of August, 2010.

State of North Dakota
Wayne Stenehjem
Attorney General

By: 

Douglas B. Anderson
Assistant Attorney General
State Bar ID No. 05072
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
Facsimile (701) 328-4300

By: 

Illona A. Jeffcoat-Sacco
State Bar ID No. 03315
Special Assistant Attorney General
Public Service Commission
600 East Boulevard Ave – Dept 408
Bismarck, ND 58505-0480
Telephone (701) 328-2400
Facsimile (701) 328-2410

Attorneys for the Public Service
Commission

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CAVALIER

NORTHEAST JUDICIAL DISTRICT

Public Service Commission,)
)
 Petitioner,)
)
 vs.)
)
 Organic Grain and Milling, Inc.,)
)
 Respondent)
 _____)
)
 PSC Case No. GE-10-327)
)

**AFFIDAVIT OF
SUSAN K. RICHTER**

Civil No. _____

Susan K. Richter being duly sworn states as follows:

1. That she is a citizen of the United States of America, of legal age, residing at Bismarck, North Dakota.
2. That she is the Director of the Licensing Division for the Public Service Commission (Commission) and as such is charged with the duty of enforcing the provisions of North Dakota Century Code Chapter 60-04.
3. Organic Grain and Milling, Inc., a North Dakota corporation, which is authorized to business in North Dakota, operated a grain warehouse at Clyde, North Dakota, and was licensed under North Dakota Century Code Chapters 60-02 and 60-04.
4. Organic Grain and Milling, Inc. operated its grain warehouse facility at Clyde, North Dakota under license number 1156.
5. As part of the licensing process, Organic Grain and Milling, Inc. filed a surety bond with the Commission as required by North Dakota Century Code § 60-02-09 in the amount of \$62,500 and identified as number FS8632211 with Great American Insurance Company, 580 Walnut St., Cincinnati, Ohio 45202, as surety.
6. On October 19, 2009, the Commission received notice that the warehouseman bond issued to Organic Grain and Milling, Inc. would be cancelled on January 27, 2010. The public grain warehouse license issued to Organic Grain and Milling, Inc. was

suspended effective December 29, 2009 pursuant to North Dakota Century Code § 60-02-09.1. The company had until January 27, 2010, to procure and file an adequate bond. No bond filing was received.

7. On February 10, 2010, the Commission issued an order revoking public grain warehouse license no. 1156 issued to Organic Grain and Milling, Inc. for failure to maintain adequate bond coverage as provided in North Dakota Century Code § 60-02-10.1 and ordering Organic Grain and Milling, Inc. to return public grain warehouse license number 1156 to the Commission.
8. In a letter dated June 17, 2010, Kodiak Farms, Ltd., informed the Commission that Organic Grain and Milling, Inc. defaulted in payments owed to Kodiak Farms, Ltd., under a Grain Sales Deferred Payment/Credit Sales Contract for the purchase and sale of 50,000 bushels of organic durum wheat within North Dakota. Kodiak Farms, Ltd., made demand to the Commission to recover the amounts owed to it by Organic Grain and Milling, Inc. from the Credit-Sale Contract Indemnity Fund.
9. On June 29, 2010, a representative of Organic Grain and Milling, Inc. advised the Commission, via e-mail, that the business no longer is operating and all assets have been liquidated and the proceeds distributed to growers.
10. That affiant believes that there may be additional outstanding obligations for unpaid claims for grain sold to Organic Grain and Milling, Inc., under North Dakota Century Code Chapter 60-02 for which bond protection is available under the provisions of North Dakota Century Code § 60-02-09 and for any credit-sale contracts for which protection is available from the credit-sale contract indemnity fund under North Dakota Century Code §§ 60-10-04 and 60-10-05.
11. That Organic Grain and Milling, Inc. is insolvent under North Dakota Century Code Chapter 60-04, in that it is unable upon proper demand to make payment for grain purchased or make redelivery for grain delivered.

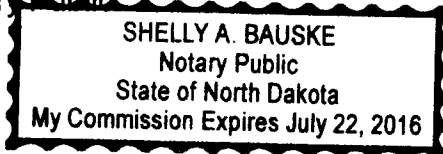
12. That the Commission is legally entitled to be appointed trustee of the trust fund provided under North Dakota Century Code Chapter 60-04.
13. That bond proceeds may be needed to redeem outstanding receipts issued by Organic Grain and Milling, Incorporated.
14. That proceeds from the credit-sale contract indemnity fund may be needed to meet the licensee's obligations to any holders of credit-sale contracts.
15. On June 29, 2010, a representative of Organic Grain and Milling, Inc. informed the Commission, via e-mail, pending accounts receivable for grain sales may be available as an asset of the trust fund.
16. That affiant believes that it is in the public interest to immediately appoint the Commission as trustee under North Dakota Century Code Chapter 60-04.
17. That the affidavit is made for the purpose of securing the appointment of the Commission as trustee of Organic Grain and Milling, Inc. and preserving any assets of the trust under North Dakota Century Code Chapter 60-04.

Dated this 12th day of August, 2010.

By: *Susan K. Richter*
Susan K. Richter

Subscribed and sworn to before me
this 12th day of August, 2010.

Shelly A. Bauske
Notary Public



STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CAVALIER

NORTHEAST JUDICIAL DISTRICT

Public Service Commission,)
)
 Petitioner,)
)
 vs.)
)
 Organic Grain and Milling, Inc.,)
)
 Respondent)
 _____)
)
 PSC Case No. GE-10-327)
)

**BRIEF IN SUPPORT
OF APPLICATION FOR
APPOINTMENT AS TRUSTEE**

Civil No. _____

The Public Service Commission (Commission) has jurisdiction over public grain warehouses under North Dakota Century Code Chapters 60-02 and 60-04, which provides for the appointment of the Commission as trustee of the assets of a public warehouse upon the filing of a notice with the Commission that the public warehouseman has defaulted in the payment for grain purchased by the public grain warehouseman.

In a letter dated June 17, 2010, Kodiak Farms, Ltd., informed the Commission that Organic Grain and Milling, Inc., defaulted in payments owed to Kodiak Farms, Ltd., under a Grain Sales Deferred Payment/Credit Sales Contract for the purchase and sale of 50,000 bushels of organic durum wheat within North Dakota. Kodiak Farms, Ltd., made demand to the Commission to recover the amounts owed to it by Organic Grain and Milling, Inc., from the Credit-Sale Contract Indemnity Fund.

On June 29, 2010, a representative of Organic Grain and Milling, Inc. advised the Commission, via e-mail, that the business no longer is operating and all assets have been liquidated and the proceeds distributed to growers.

The Commission is informed and has reason to believe that there are outstanding obligations for unpaid claims for grain sold to Organic Grain and Milling, Inc., as a public warehouseman under North Dakota Century Code Chapter 60-02 for which bond protection is available under the provisions of North Dakota Century Code § 60-02-09 and for any credit-sale contracts for which protection is available from the credit-sale contract indemnity fund under North Dakota Century Code §§ 60-10-04 and 60-10-05.

It is in the best interests of all claimants that the Commission be appointed Trustee, and be given the powers under North Dakota Century Code Chapters 60-04 and 60-10 so that all claimants will be treated fairly.

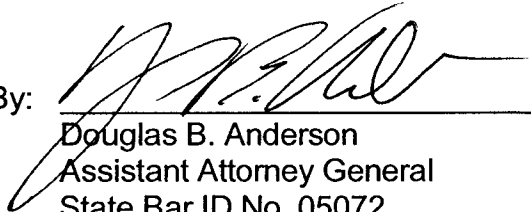
Upon the insolvency, the Commission has the authority under North Dakota Century Code Chapter 60-04 to make payment of valid claims to any persons holding noncredit-sale receipts for grain sold or stored.

The Commission has the authority under North Dakota Century Code § 60-10-05 to make payment to any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated under the contract.


The Court has jurisdiction under North Dakota Century Code § 60-04-03, which provides for the filing of this action in the District Court, Northeast Judicial District.

Dated this 12th day of August, 2010.

State of North Dakota
Wayne Stenehjem
Attorney General

By: 

Douglas B. Anderson
Assistant Attorney General
State Bar ID No. 05072
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
Facsimile (701) 328-4300

By: 

Illona A. Jeffcoat-Sacco
State Bar ID No. 03815
Special Assistant Attorney General
Public Service Commission
600 East Boulevard Ave – Dept 408
Bismarck, ND 58505-0480
Telephone (701) 328-2400
Facsimile (701) 328-2410

Attorneys for the Public Service
Commission

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CAVALIER

NORTHEAST JUDICIAL DISTRICT

Public Service Commission,)
)
 Petitioner,)
)
 vs.)
)
 Organic Grain and Milling, Inc.,)
)
 Respondent)
 _____)
 PSC Case No. GE-10-327)

NOTICE OF APPLICATION FOR APPOINTMENT AS TRUSTEE

Civil No. _____

To: Organic Grain and Milling, Inc., c/o Britt Eustis, P.O. Box 16550, Saint Paul, MN 55116

Organic Grain and Milling, Inc., by and through its Registered Agent, Thomas Stadler
976 16th St. E., Langdon, ND 58249-3000

Great American Insurance Company, Attention Bond Claims, P.O. Box 2119,
Cincinnati, Ohio 45201

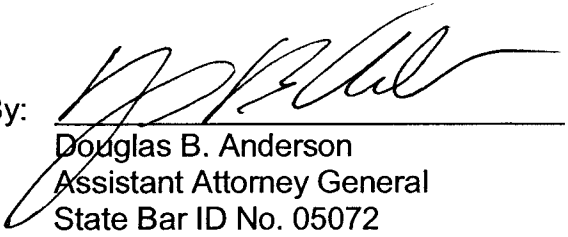
Kodiak Farms, Ltd., c/o Jacob C. Hendricks, Felhaber, Larson, Fenlon, & Vogt, 220
S. 6th St., Minneapolis, MN 55402-4504

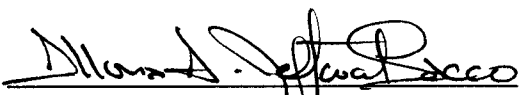
PLEASE TAKE NOTICE that the Public Service Commission, petitioner in the above proceeding, respectfully moves the Court for an order appointing the Public Service Commission Trustee for Organic Grain and Milling, Inc. The application and motion, affidavit and brief in support of the application and motion are attached to this notice and by reference made a part hereof.

YOU ARE HEREWITH NOTIFIED that the attached Application for Appointment as Trustee has been submitted to the Court pursuant to Rule 3.2 of the North Dakota Rules of Court. The motion will be decided on briefs unless oral argument is timely requested. You have ten (10) days after the service of the Notice to file your response and other supporting papers.

Dated this 12th day of August, 2010.

State of North Dakota
Wayne Stenehjem
Attorney General

By: 
Douglas B. Anderson
Assistant Attorney General
State Bar ID No. 05072
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
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By: 
Illona A. Jeffcoat-Sacco
State Bar ID No. 03315
Special Assistant Attorney General
Public Service Commission
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Telephone (701) 328-2400
Facsimile (701) 328-2410

Attorneys for the Public Service
Commission

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CAVALIER

NORTHEAST JUDICIAL DISTRICT

Public Service Commission,)
)
 Petitioner,)
)
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)
 Organic Grain and Milling, Inc.,)
)
 Respondent)
 _____)
)
 PSC Case No. GE-10-327)
)

**AFFIDAVIT OF SERVICE
BY CERTIFIED MAIL**

Civil No. _____

STATE OF NORTH DAKOTA)
) ss.
 COUNTY OF BURLEIGH)

Geralyn R. Schmaltz deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 12th day of August, 2010, she deposited in the United States Mail, Bismarck, North Dakota four envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

1. Application for Appointment as Trustee;
2. Affidavit of Susan K. Richter;
3. Brief in Support of Application for Appointment as Trustee and;
4. Notice of Application for Appointment as Trustee.

The envelopes were addressed as follows:

Britt Eustis
 Organic Grain and Milling, Inc.
 PO Box 16550
 St. Paul, MN 55166
 Cert. Mail No. 7010 1060 0001 0644 4338

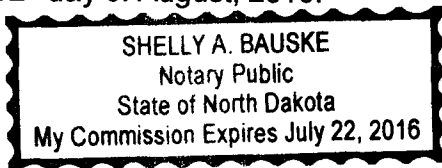
Thomas Stadler, Registered Agent for
 Organic Grain and Milling, Inc.
 976 16th Street East
 Langdon, ND 58249-3000
 Cert. Mail No. 7010 1060 0001 0644 4345

Great American Insurance Company
Attention Bond Claims
PO Box 2119
Cincinnati, OH 45201

Cert. No. 7010 1060 0001 0644 4352

Jacob C. Hendricks
Felhaber, Larson, Fenlon & Vogt
Attorney for Kodiak Farms, Ltd.
220 South 6th Street
Minneapolis, MN 55402-4504
Cert. No. 7010 1060 0001 0644 4369

Subscribed and sworn to before me
this 12th day of August, 2010.



Jacob C. Hendricks

Shelly A. Bauske

Notary Public

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CAVALIER

NORTHEAST JUDICIAL DISTRICT

Public Service Commission,)
)
 Petitioner,)
)
 vs.)
)
 Organic Grain and Milling, Inc.,)
)
 Respondent)
 _____)
)
 PSC Case No. GE-10-327)
)

**ORDER GRANTING
APPLICATION FOR
APPOINTMENT AS TRUSTEE**

Civil No. _____

The Public Service Commission (Commission) has moved the Court for appointment as trustee of Organic Grain and Milling, Inc., under North Dakota Century Code Chapter 60-04. Organic Grain and Milling, Inc. operates as a public warehouseman in the State of North Dakota.

It appears from the record that Organic Grain and Milling, Inc. is insolvent under North Dakota Century Code Chapter 60-04 and that it is in the best interest that a trustee be appointed.

ORDERED THEREFORE on the Application and Motion of the Commission by and through its attorney, the Commission is appointed trustee of the trust fund provided by North Dakota Century Code § 60-04-03 for the purpose of marshalling all trust assets of the insolvent Organic Grain and Milling, Inc., in the manner provided by law.

Dated this _____ day of _____, 2010.

District Judge
Northeast Judicial District