

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

_____)	
Public Service Commission)	CIVIL NO. _____
)	
Petitioner,)	
)	
vs.)	
)	APPLICATION FOR
Anderson Seed Co., Inc.)	APPOINTMENT AS
)	TRUSTEE AND FOR
Respondent.)	EX PARTE ORDER
_____)	
PSC Case No. GE-12-78)	
_____)	

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

1.

Anderson Seed Co., Inc., a Minnesota corporation authorized to do business in North Dakota, operates licensed grain warehouses at Durbin and Selz, North Dakota, subject to North Dakota Century Code Chapters 60-02 and 60-04.

2.

Anderson Seed operates grain warehouses at Durbin, under license number 1132 and at Selz, North Dakota, under license number 1153.

3.

A surety bond covering both locations is on file with the Commission as required by North Dakota Century Code §60-02-09. The surety bond is for \$280,000.00 and

identified as number 087708 66042403 with Auto-Owners Insurance Company, P.O. Box 30660, Lansing, Michigan, as surety.

4.

On February 15, 2012, , the Commission received a letter with attachments from Douglas Doll on behalf of the Doll & Pazdernik Partnership of Mandan, North Dakota, alleging the partnership has not been paid for sunflower seeds delivered to Anderson Seed Co., Inc. at the licensed grain warehouse in Durbin, North Dakota. Between February 21, 2012 and February 24, 2012, the Commission received 18 additional written communications, each alleging nonpayment for sunflower seeds delivered or sold to Anderson Seed Co., Inc.

5.

On February 16, 2012, a Public Service Commission inspection confirmed that there was minimal grain inventory of unknown quality in the Durbin facility. On February 23, 2012, a Public Service Commission inspection confirmed that there was no grain inventory in the Selz facility. The station manager at the Selz facility told the Commission's inspector that in January 2012, all grain inventory was moved to a storage site in Minnesota.

6.

The Commission was informed and has reason to believe that there are outstanding obligations for unpaid claims for grain sold to Anderson Seed as a public warehouseman under North Dakota Century Code Chapter 60-02. Under the provisions of North Dakota Century Code §60-02-09, bond protection is available for the benefit of all persons storing or selling grain by such warehouseman. Under the provisions of

North Dakota Century Code §60-10-04 a person is eligible to receive indemnity payments from the credit-sale contract indemnity fund if the licensed warehouse to which the person sold grain to becomes insolvent.

7.

Anderson Seed Co., 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 marketed by the licensee or to make redelivery or payment for grain stored.

8.

The Commission was informed and has reason to believe that Anderson Seed Co., Inc. moved or is in the process of moving grain by truck out of the licensed grain warehouses at Durbin, North Dakota and at Selz, North Dakota, to a storage facility in Fertile, Minnesota. The Commission is concerned that moving the grain could compromise the trust fund that is established under North Dakota Century Code §60-04-03.1.

9.

North Dakota Century Code §60-04-03 provides that the court may issue *ex parte* a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.

10.

The Commission is legally entitled to be appointed trustee of the trust fund provided under North Dakota Century Code Chapter 60-04.

11.

Bond proceeds may be needed to redeem outstanding receipts issued by Anderson Seed. 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.

12.

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 issue *ex parte* a temporary **ORDER** to preserve and protect the trust assets under North Dakota Century Code §60-04-03.1.
2. That the Court declare Anderson Seed Co., Inc. **INSOLVENT** within the meaning of North Dakota Century Code Chapter 60-04 and establish the date of

insolvency as February 15, 2012, the date the first claim for non payment for sunflower seeds delivered or sold was filed at the Commission.

3. That the Court **APPOINT** the Public Service Commission as trustee of the trust fund under North Dakota Century Code §60-04-03.

Bismarck, North Dakota, this 29th day of February, 2012.



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