

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Grand Forks Bean, Co., Inc.
Ex Parte Cease & Desist

Case No. GE-15-30

Ex Parte Cease and Desist Order

January 16, 2015

On January 16, 2015, Licensing Division Staff (Staff) filed an Affidavit providing the Commission with information sufficient to support issuance of an *Ex Parte Cease and Desist Order* against Grand Forks Bean Company, Inc. (Grand Forks Bean) as authorized by North Dakota Century Code section 60-02-42.

The Affidavit indicated the following:

On November 18, 2014, the Licensing Division received a phone call from a producer inquiring about redelivery of dry edible beans that the producer had delivered to Grand Forks Bean Company, Inc. (Grand Forks Bean) at its licensed grain warehouse in Grand Forks, North Dakota. The producer alleged Grand Forks Bean had not been able to market his dry edible beans. The producer further informed the Affiant that he had contacted Grand Forks Bean staff about taking redelivery of beans because Grand Forks Bean was not able to market the dry edible beans.

Between November 18, 2014 and December 19, 2014, the Licensing Division received additional phone calls from producers who delivered dry edible beans to the licensed grain warehouse in Grand Forks.

On December 1, 2014 Commission Staff measured the dry edible bean inventory and it appears there is sufficient inventory to meet redelivery obligations.

Between December 19, 2014 and December 23, 2014, the Commission received information, via electronic mail or facsimile, from eight producers alleging Grand Forks Bean had not been able to market their dry edible beans or had not paid the producers for the dry edible beans delivered to Grand Forks Bean at their licensed grain warehouse in Grand Forks, North Dakota.

On December 23, 2014, Grand Forks Bean Company, Inc. and Public Service Commission Staff executed a Stipulation in which Grand Forks Bean agreed that the dry edible bean inventory in the Grand Forks Bean facility will not be sold, redelivered, or moved from the Grand Forks facility without prior Commission approval, that Grand Forks Bean will not receive additional grain, that the beans will continue to be stored in suitable facilities and in a suitable fashion to maintain the quality of the dry bean inventory, and that Grand Forks Bean will continue to maintain insurance on the dry edible bean inventory. A copy of this Stipulation is attached to and made a part of the Affidavit.

Commission Staff has reason to believe, after discussions with counsel for producers, that it is unlikely this matter can be resolved outside a formal insolvency proceeding.

The Stipulation entered into by Staff provides that a violation of the Stipulation may result in further formal Commission proceedings, including the issuance of an *Ex Parte* Cease and Desist order against Grand Forks Bean Company, Inc. Staff indicated staff is not aware of any violation of the Stipulation. However, because Staff now has reason to believe that it is unlikely the matter can be resolved informally, staff indicated it is recommending that the Commission apply to district court for appointment as trustee and also that an *Ex Parte* Cease and Desist Order against Grand Forks Bean is appropriate. Commission staff contacted Grand Forks Bean regarding the matter.

North Dakota Century Code section 60-02-42 provides the Commission with authority to issue an *Ex Parte* Cease and Desist Order without prior notice against an entity that engages in an activity or practice that is contrary to the provisions of North Dakota law or rules. A Cease and Desist Order must be accompanied by a Notice of Opportunity to be Heard on the order within fifteen (15) days of the issuance of the Order.

Affiant stated she believes that good cause exists requiring *ex parte* action by the Commission because sellers of grain may suffer immediate economic loss, damage, or injury if Grand Forks Bean Company, Inc. receives or purchases any grain, moves any grain out of the Grand Forks facility that may be an asset of the trust, or fails to maintain

control of potential trust assets in a manner consistent with the Stipulation attached to the Affidavit.

Affiant has informed the Commission that it is her opinion that based on the written information filed with the Commission for the nonpayment for dry edible beans delivered or sold to Grand Forks Bean Company, Inc., Grand Forks Bean Company, Inc. is insolvent under North Dakota Century Code Chapter 60-04.

The Commission has considered the information provided by Staff and finds that unless an *Ex Parte* Cease and Desist Order is issued, producers may suffer economic loss, damage, or injury as a result of the actions of Grand Forks Bean Company, Inc.

Therefore, the Commission issues the following:

Order

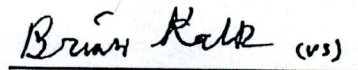
The Commission orders:

1. Grand Forks Bean Company, Inc. to **Cease and Desist** from receiving or purchasing any grain, moving any grain out of the Grand Forks facility without prior Commission permission that may be an asset of the trust, or failing to maintain control of potential trust assets in a manner consistent with the Stipulation attached to the Affidavit.
2. Contemporaneously with this Order, the Commission is issuing to Grand Forks Bean Company, Inc. a notice of opportunity to be heard within fifteen days of the service of this Order.

PUBLIC SERVICE COMMISSION


Randy Christmann
Commissioner


Julie Fedorchak (SPO)
Chairman


Brian P. Kalk (SPO)
Commissioner

had not paid the producers for the dry edible beans delivered to Grand Forks Bean Company, Inc. at their licensed grain warehouse in Grand Forks, North Dakota.

That on December 23, 2014, Grand Forks Bean Company, Inc. and Public Service Commission Staff executed a Stipulation agreeing that the dry edible bean inventory in the Grand Forks Bean facility will not be sold, redelivered, or moved from the Grand Forks facility without prior Commission approval, that Grand Forks Bean Company, Inc. will not receive additional grain, that the beans will continue to be stored in suitable facilities and in a suitable fashion to maintain the quality of the dry bean inventory, and that Grand Forks Bean Company, Inc. will continue to maintain insurance on the dry edible bean inventory.

That Commission Staff believes after discussions with counsel for producers, attempts to resolve this matter outside an insolvency are not possible.

That although the Stipulation provided that a violation of the Stipulation may result in further formal Commission proceedings, including the issuance of an *ex parte* cease and desist order against Grand Forks Bean Company, Inc., Staff is not aware of any violation, however, due to the fact that Staff will be recommending that the Commission apply to district court for appointment as trustee, Staff believes an *ex parte* cease and desist order against Grand Forks Bean Company, Inc. is appropriate.

That Grand Forks Bean Company, Inc., operates a licensed public grain warehouse in North Dakota at Grand Forks, North Dakota since 2005. As required by North Dakota Century Code section 60-02-09 and North Dakota Administrative Code section 69-07-02-02 Grand Forks Bean Company, Inc. has a \$100,000 bond on file with the Public Service Commission.

That the Licensing Division is preparing and will be asking the Commission to file documents with Grand Forks County District Court, asking that Grand Forks Bean Company, Inc. be declared insolvent under North Dakota Century Code Chapter 60-04, and the Commission be appointed trustee in the insolvency proceeding.

That it appears the bond on file with the Public Service Commission will not be sufficient to cover the total amount owed to producers for the dry edible beans delivered to Grand Forks Bean Company, Inc.

North Dakota Century Code section 60-02-42 provides the Commission with authority to issue a cease and desist order without prior notice against an entity that engages in an activity or practice that is contrary to the provisions of North Dakota Century Code Chapter 60-02 or related rules.

Affiant has reason to believe Grand Forks Bean Company, Inc. has violated North Dakota Century Code section 60-02-09 (4)(a) by failing to faithfully perform the licensee's duties as a public warehouseman and North Dakota Century Code section 60-04-02 by refusing, neglecting, or being unable upon proper demand to make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored.

Affiant believes that good cause exists requiring *ex parte* action by the Commission because sellers may suffer economic loss, damage or injury if Grand Forks Bean Company, Inc. were to receive or purchase grain as a licensed public warehouseman in North Dakota or if Grand Forks Bean Company, Inc. is permitted to move any more grain out of North Dakota that may be an asset of the insolvency trust.

It is Affiant's opinion that based on the written information filed with the Commission for the inability to market or pay for dry edible pinto beans delivered to

Grand Forks Bean Company, Inc. at Grand Forks, North Dakota, Grand Forks Bean Company, Inc. is insolvent under North Dakota Century Code Chapter 60-04.

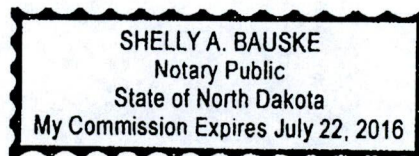
Further, it is Affiant's opinion that in order to preserve the potential trust, Grand Forks Bean Company, Inc. should not be allowed to receive or purchase any grain, move any grain out of the Grand Forks facility that may be an asset of the trust, or fail to maintain control of potential trust assets in a manner consist with the attached Stipulation.

Affiant requests that the Commission issue an *Ex Parte* Cease and Desist Order against Grand Forks Bean Company, Inc. as authorized by North Dakota Century Code section 60-02-42, ordering that Grand Forks Bean Company, Inc. cease and desist from receiving or purchasing grain, moving any grain out of the Grand Forks facility that may be an asset of the trust, or failing to maintain control of potential trust assets in a manner consistent with the attached Stipulation.

Susan K. Richter

Subscribed and sworn to before me this 16 day of January, 2015.

Shelly A Bauske
Notary Public



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Grand Forks Bean Company, Inc.
Grain Warehouse
Annual Activity

Case No. GE-14-595

STIPULATION

1. Whereas, Grand Forks Bean Company, Inc., (Grand Forks Bean) a North Dakota business corporation, authorized to do business in North Dakota operates a licensed public grain warehouse at Grand Forks, North Dakota and is licensed under North Dakota Century Code Chapters 60-02 and 60-04.
2. Whereas, Grand Forks Bean operates its grain warehouse at Grand Forks, North Dakota, under license no. 1164, issued by the Commission in 2005.
3. Whereas, Grand Forks Bean has a \$100,000 surety bond on file with the Commission, as required by North Dakota Century Code section 60-02-09 and North Dakota Administrative Code section 69-07-02-02.
4. Whereas, since November 18, 2014, Commission staff received a number of calls from producers who delivered dry edible beans to Grand Forks Bean, indicating that Grand Forks Bean has not made payment for or redelivery of the beans.
5. Whereas, Commission staff contacted Grand Forks Bean regarding resolution of the matter. On December 1, 2014 Commission Staff measured the dry edible bean inventory and it appears there is sufficient inventory to meet redelivery obligations.
6. Whereas, to date, six claims have been filed electronically or via facsimile, of which three claims included support documents.
7. Commission staff has considered recommending that the Commission issue an ex parte cease and desist order for the purpose of protecting Grand Forks Bean's dry edible bean inventory.

Now, therefore, the parties to this Stipulation, Grand Forks Bean Company, Inc., and Public Service Commission Staff, agree that Grand Forks Bean Company, Inc. will:

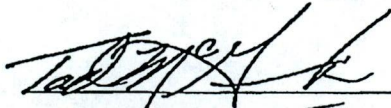
1. Not sell any portion of the dry edible bean inventory in the Grand Forks Bean facility without prior Commission approval.
2. Not move or permit the movement of dry edible beans from the Grand Forks Bean facility without prior Commission approval.
3. Not make redelivery of any portion of the dry edible beans to any producer without prior Commission approval.
4. Not receive additional grain.
5. Continue storing the beans in suitable facilities and in a suitable fashion to maintain the quality of the dry bean inventory.
6. Continue to maintain insurance on the dry edible bean inventory.

Further, Grand Forks Bean Company, Inc. acknowledges that a violation of Stipulation may result in further formal Commission proceedings, including the filing of a formal complaint against Grand Forks Bean Company, Inc., the issuance of an *ex parte* cease and desist order against Grand Forks Bean, and the assessment of penalties against Grand Forks Bean Company, Inc. Grand Forks Bean Company, Inc. further certifies that TAD Mc GURK, as personal representative of Grand Forks Bean, has authority to sign the Stipulation and bind Grand Forks Bean Company, Inc. to the provisions of this Stipulation

This Stipulation is effective the date executed by Grand Forks Bean Company, Inc.

Dated this 23RD day of December, 2014.

Grand Forks Bean Company, Inc.

By 
Its PRESIDENT
(Title)

Dated this 23rd day of December, 2014.

North Dakota Public Service Commission
Licensing Division

By Susan K. Richter
Its Division Director
(Title)

Richter, Susan K.

From: Dee <dee@ralawfirms.com>
Sent: Tuesday, December 23, 2014 4:00 PM
To: Richter, Susan K.
Cc: rmelland@camrudlaw.com; allenflaten@northdakotalaw.net
Subject: Grand Forks Bean Company, Inc.
Attachments: Stipulation.pdf

Dear Ms. Richter,

Attached please find the stipulation executed by Mr. McGurk. Please be advised that he has the authority to sign the stipulation by virtue of the fact that he is the personal representative of the Todd McGurk Estate and the fact that a corporate resolution has been executed naming him President of the Corporation since Todd McGurk's death.

You may note that I am copying both Mr. Melland representing the farmers, and Mr. Flaten, representing Bremer Bank, and would encourage counsel to speak the each other regarding their client's respective interests prior to proceeding further in this matter.

Sending this on behalf of Joel F. Arnason, Attorney at law.

Dee Hillhouse

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