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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Grand Forks Bean Company, Inc.

Respondent.

PSC Case No. GE-15-36

18-2015-CV-00240

CIVIL NO. _____

APPLICATION FOR
APPOINTMENT AS
TRUSTEE AND FOR
EX PARTE ORDER

1. The North Dakota Public Service Commission (Commission) alleges as follows:
2. Grand Forks Bean Company, Inc. (Grand Forks Bean), a North Dakota business corporation, operates a licensed grain warehouse at Grand Forks, North Dakota, subject to North Dakota Century Code Chapters 60-02 and 60-04.
3. Grand Forks Bean operates its grain warehouse at Grand Forks, North Dakota, under license number 1164.
4. A surety bond is on file with the Commission as required by North Dakota Century Code section 60-02-09. The surety bond is for \$100,000.00 and identified as number 077708 66024305 with Auto-Owners Insurance Company, 6101 Anacapri Boulevard, Lansing, Michigan, as surety.
5. 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 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 according to his price later marketing agreement with Grand Forks Bean. The producer also stated he was contacting Licensing Division staff about taking redelivery of beans because Grand Forks Bean was not able to market the dry edible beans.

6. On November 19, 2014, Licensing Division staff contacted Grand Forks Bean to discuss the producer's request for redelivery of dry edible beans. Staff asked Grand Forks Bean about its current dry edible bean inventory and if the inventory was sufficient to make redelivery to each producer who had delivered dry edible beans to the licensed grain warehouse in Grand Forks. Staff asked Grand Forks Bean to fax a copy of all price later marketing agreements it had issued and related assembly sheets. Staff also asked Grand Forks Bean to fax a copy of all documents for any producer who delivered beans after a February 2014 grain warehouse examination.
7. On November 19, 2014 and November 20, 2014, Grand Forks Bean faxed staff copies of the requested price later marketing agreements and assembly sheets.
8. Between November 25, 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.
9. On December 1, 2014, a Commission Grain Warehouse Inspector visited Grand Forks Bean and measured the grain inventory, concluding the inventory

consisted of approximately 40,000 hundredweight of pinto beans. The Inspector was not able to review the Grand Forks Bean records at that time.

10. Between December 19, 2014 and December 23, 2014, the Commission received claims from eight producers. The claims were filed via electronic mail or facsimile. Each producer alleged Grand Forks Bean had not been able to market the producer's beans or pay for the beans delivered to Grand Forks Bean's facility in Grand Forks, North Dakota. A copy of each claim is attached as Exhibit 1.
11. On December 23, 2014, Grand Forks Bean Company, Inc. and Public Service Commission Staff executed a Stipulation in which Grand Forks Bean agreed that it will not receive additional grain, 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 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.
12. 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. Although Staff was not aware of any violation, Staff concluded, as a result of several discussions with growers, the warehouse and the bank, that the matter could not be resolved outside an insolvency proceeding. As a result, on January 16, 2015, Staff

recommended the Commission issue an *Ex Parte* Cease and Desist Order against Grand Forks Bean Company, Inc.

13. On January 16, 2015, the Commission issued an *Ex Parte* Cease and Desist Order against Grand Forks Bean Company, Inc. 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 Stipulation
14. The Commission, eight growers who had filed claims, and Bremer Bank continued to discuss the pending insolvency filing, the interests of the parties in the beans, and the need to sell the bean inventory in the Grand Forks Bean facility to maximize proceeds. All parties agreed the beans should be sold as quickly as possible, before deterioration and during acceptable weather for this commodity. The parties engaged in negotiations on a second Stipulation in order to provide a means to liquidate the inventory and preserve its value, to protect the proceeds, and also to preserve any interest the parties assert in those proceeds for resolution through the insolvency proceeding or via another means.
15. The growers assert, under North Dakota Century Code section 60-02-25.1, as outstanding receipt holders, they have a statutory first priority lien giving them rights to all beans held at the Grand Forks facility to satisfy their claims for the beans they sold or delivered to Grand Forks Bean. The bank asserts it has a perfected security interest in the grain inventory and other assets of Grand Forks bean that may become a part of the trust in any insolvency proceeding and filed

a claim to this effect on January 28, 2015. The Commission asserts an interest in the beans and other assets of Grand Forks Bean, arising by statute, with respect to the claims of the growers and other receipt holders, if any.

16. To move toward liquidation, bids were entertained for purchase of the beans. Central Valley Bean Cooperative, American Bean LLC, SRS Commodities Limited, Star of the West Milling Company, Forest River Bean Co. Inc., Johnstown Bean Company, and Walhalla Bean Company were provided an opportunity to inspect samples of the pinto beans and submit bids.
17. Central Valley Bean Cooperative (Central Valley Bean) submitted a bid of \$23.50/cwt delivered to Buxton or \$22.75/cwt based off a #1 pinto, normal discounts to apply with assurance of clean title to beans, including loading and hauling. American Bean LLC submitted a bid of \$22.25/cwt for three bins and \$16.25/cwt for one bin including loading and hauling. SRS Commodities Limited submitted a bid of \$20.00/cwt based on US #1 grade (discounts to be applied as necessary), US#2 - \$1/cwt discount and US#3 - \$2/cwt discount and would furnish equipment, labor and transportation.
18. All parties agreed the bid from Central Valley Bean was the most reasonable bid.
19. On January 30, 2015, a Stipulation for the Sale of Inventory and Deposit of Proceeds was executed by attorneys for the Commission, Grand Forks Bean Company, eight growers, and Bremer Bank, National Association. (Subsequently all parties agreed via electronic mail that the Letter of Credit from Central Valley Bean need not be irrevocable.)
20. Commission staff informed Central Valley Bean that its bid was accepted, based

on the terms submitted, with a price of \$22.75/cwt based off a #1 pinto, normal discounts to apply, including loading and hauling.

21. On February 3, 2015, Central Valley Bean began transporting the beans to its licensed grain warehouse in Buxton, North Dakota. The final load of beans was transported on February 11, 2015. A Grand Forks Bean outbound scale ticket was issued for each load of beans moved from the Grand Forks Bean warehouse and a copy of each outbound scale ticket was provided to the Commission. Commission Staff created an assembly report that included a record for each load of beans moved from the Grand Forks Bean warehouse.
22. Central Valley Bean issued an inbound scale ticket for each load of beans received with grading information and Grand Forks Bean, the Public Service Commission, and the trucking company indicated as the persons from whom the grain was received. Central Valley Bean provided a copy of each inbound scale ticket to the Commission. Central Valley Bean created a daily assembly report that included a record for each load of beans received and provided a copy of each daily assembly report to the Commission.
23. Once all beans were removed from the Grand Forks warehouse and delivered to Central Valley Bean, Central Valley Bean provided a final assembly report to the Commission. Central Valley Bean paid the Commission the full amount due, with a final payment made on February 11, 2015.
24. The proceeds from the sale of the Beans have been received and deposited in an interest bearing escrow account at the Bank of North Dakota under the name Grand Forks Bean Company, Inc., and the Stipulation for the Sale of Inventory

and Deposit of Proceeds was provided to the bank to evidence the conditions of the escrow. The funds will remain on deposit until the Commission is appointed trustee at which time the funds will be transferred into the Public Service Commission's Grand Forks Bean Company, Inc. trust account at the Bank of North Dakota.

25. The Commission was informed and has reason to believe there are outstanding obligations for unpaid claims for grain sold to Grand Forks Bean as a public warehouseman under North Dakota Century Code Chapter 60-02. Under the provisions of North Dakota Century Code section 60-02-09, bond protection is available for the benefit of all persons storing or selling grain to such warehouseman. Under the provisions of North Dakota Century Code section 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.
26. Grand Forks Bean 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.
27. North Dakota Century Code section 60-04-03 provides that the Court may issue *ex parte* a temporary order to preserve or protect any assets and potential assets of the trust fund until the Court issues its order granting or denying the application.
28. The Commission is legally entitled to be appointed trustee of the trust fund provided under North Dakota Century Code Chapter 60-04.

29. Bond proceeds may be needed to redeem outstanding receipts issued by Grand Forks Bean. North Dakota Century Code section 60-04-03.3 provides:

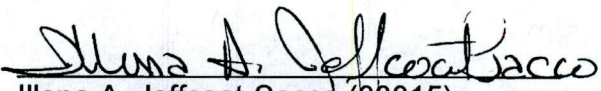
The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the commission when the commission believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. When it appears in the best interests 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.

30. The Commission is not requesting the bonding company be joined at this time, but will request joinder of the bonding company at a later date if the Commission believes bond proceeds are needed.
31. 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 section 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.

32. **WHEREFORE** the Public Service Commission respectfully requests:
33. That the Court issue *ex parte* a temporary **ORDER**:
- a. Requiring Grand Forks Bean Company, Inc. to preserve and protect any trust assets under North Dakota Century Code section 60-04-03.1 and

- b. Authorizing the Commission to immediately take any action deemed necessary to preserve and protect the trust assets under North Dakota Century Code section 60-04-03.1.
34. That the Court declare Grand Forks Bean Company, Inc. **INSOLVENT** within the meaning of North Dakota Century Code Chapter 60-04 and establish the date of insolvency as December 19, 2014, the date the first claim alleging nonpayment for grain delivered or sold was filed with the Commission.
35. That the Court **APPOINT** the Commission as trustee of the trust fund under North Dakota Century Code section 60-04-03.
36. Respectfully submitted at Bismarck, North Dakota, this 13th day of **February, 2015.**


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