

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.,

and

Auto-Owners Insurance Company

Respondents.

Civil No. 18-2015-CV-00240

**OBJECTION OF
BRENT BALDWIN, BALDWIN FARMS,
INC., AND DUANE ALTENDORF TO
PETITIONER'S MOTION TO APPROVE
REPORT AND RECOMMENDATION OF
TRUSTEE, APPROVE PAYMENTS, AND
DISCHARGE TRUSTEE AND TO THE
PETITIONER'S REPORT AND
RECOMMENDATION OF TRUSTEE**

PSC Case No. GE-15-36

[¶1] Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf, by and through their attorney Daniel L. Gaustad, for their objection to the Petitioner's Motion to Approve Report and Recommendation of Trustee, Approve Payments and Discharge Trustee (Court Doc. No. 153) and Report and Recommendation of Trustee (Court Doc. No. 155)¹ state as follows:

[¶2] Based on the market price used by the Petitioner, the Report states that the amount of the allowed claim for Brent Baldwin is \$48,314.82. See Court Doc. No. 155. This amount is not correct. As indicated in the Amended Claim of Brent Baldwin, dated January 28, 2016 and filed on January 29, 2016 (Court Doc. Nos. 193-196), Brent Baldwin's claim is in the amount of \$84,373.68, together with interest accruing from and after October 15, 2013.

¹ The Petitioner's Motion to Approve Report and Recommendation of Trustee, Approve Payments and Discharge Trustee (Court Doc. No. 153) and Report and Recommendation of Trustee (Court Doc. No. 155) shall be collectively referred to herein as the "Report."

[¶3] Based on the market price used by the Petitioner, the Report states that the amount of allowed claim for Baldwin Farms, Inc. is \$21,884.47. See Court Doc. No. 155. This amount is not correct. As indicated in the Amended Claim of Baldwin Farms, Inc., dated January 28, 2016 and filed on January 29, 2016 (Court Doc. Nos. 188-191), Baldwin Farms, Inc.'s claim is in the amount of \$38,216.98, together with interest accruing from and after October 15, 2013.

[¶4] Based on the market price used by the Petitioner, the Report states that the amount of allowed claim for Duane Altendorf is \$52,402.87. See Court Doc. No. 155. This amount is not correct. As indicated in the Amended Claim of Duane Altendorf, dated January 28, 2016 and filed on January 29, 2016 (Court Doc. Nos. 198-201), Duane Altendorf's claim is in the amount of \$91,512.36, together with interest accruing from and after October 15, 2013.

[¶5] The Report incorrectly reflects the amount for the claims of Brent Baldwin, Baldwin Farms, Inc. and Duane Altendorf because the Petitioner selected of the wrong insolvency date. North Dakota Century Code § 60-04-02 provides a licensee, such as Grand Forks Bean Company, Inc., is insolvent when the licensee either "refuses, neglects, or 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." N.D.C.C. § 60-04-02. The date of insolvency is determined based on the conduct of the licensee as to any grain held by the licensee. Id. Thus, the date of the earliest demand by any claimant for either payment or redelivery of beans establishes the date of insolvency for all claims in this case. Id. The undisputed evidence in this case is that by October 15, 2013, Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf had each made proper demand upon Grand Forks Bean Company, Inc. for payment on their respective beans,

and Grand Forks Bean, Inc. refused, neglected, or was unable to do so. Therefore, by operation of N.D.C.C. § 60-04-02, the proper date of insolvency is October 15, 2013.

[¶6] The significance of the selection of the proper date of insolvency is that the date of insolvency establishes the price to be used in determining the amount of claims in this case. N.D.C.C. § 60-04-09. As of the date of insolvency stated in the Report – December 19, 2014 – the prevailing market price of the subject beans was \$23 per cwt. However, as of the correct date of insolvency – October 15, 2013 – the prevailing market price of the subject beans was \$38 per cwt. When applying the correct \$38.00/cwt prevailing market price to the undisputed quantity of beans, the correct allowed claim for Brent Baldwin is \$84,373.68 (2,220.36 cwt. x \$38.00/cwt), for Baldwin Farms, Inc. is \$38,216.98 (1,005.71 cwt. x \$38.00/cwt), and for Duane Altendorf is \$91,512.36 (2,408.22 cwt. x \$38.00 cwt).

[¶7] The Report also incorrectly assesses storage charges against the claims for Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf. The Report recommends the assessment of storage charges at the rate of \$.15 per month from May 1, 2014 through December 18, 2014. There is no basis for such a position. The evidence at trial will establish that Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf did not deliver their beans for storage but instead delivered them for prompt sale and payment. Further, the evidence will show that prior to May 1, 2014, Brent Baldwin, Baldwin Farms, Inc. and Duane Altendorf repeatedly requested sale and payment for their beans. The fact Grand Forks Bean Company, Inc., rejected those demands does not warrant the imposition of storage charges for the period May 1, 2014 through December 18, 2014 against Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf. The assessment of storage charges is contrary to the dictates of law and equity and improperly rewards Grand Forks Bean Company, Inc., for violating its duties as a licensee.

[¶8] The Report does provide interest on the claims of Brent Baldwin, Baldwin Farms, Inc. and Duane Altendorf is to be paid, as per N.D.C.C. § 60-04-09, but does not then calculate the amount of such interest. Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf are entitled to accrue interest on their claims from and after the date of the insolvency of Grand Forks Bean Company, Inc.

[¶9] Finally, the Report does request “expenses incurred in the administering of the insolvency be paid from the trust fund,” and such amount be “determined following any hearing and final proceedings, once the Court approval is received.” Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf reserve the right to review and object to the amount, reasonableness, or necessity of such expenses at the later hearing on the matter.

[¶10] **WHEREFORE**, Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf, state that the Report should be approved by the Court subject to the following modifications:

A. The claim of Brent Baldwin is in the sum of \$84,373.68, together with interest accruing from and after October 15, 2013.

B. The claim of Baldwin Farms, Inc. is in the sum of \$38,216.98, together with interest accruing from and after October 15, 2013.

C. The claim of Duane Altendorf is in the sum of \$91,512.36, together with interest accruing from and after October 15, 2013.

D. The above claims be paid immediately out of the monies held in trust by the Petitioner and the proceeds of the bond provided by Auto-Owners Insurance Company to Grand Forks Bean Company, Inc.

Dated this 3rd day of March, 2016.

PEARSON CHRISTENSEN, PLLP



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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., Auto-
Owners Insurance Company,

Respondents,

-vs-

Bremer Bank, National Association,

Applicant for Intervention.

Civil No. 18-2015-CV-00240

AFFIDAVIT OF SERVICE

PSC Case No. GE-15-36

STATE OF NORTH DAKOTA)

: SS.

COUNTY OF GRAND FORKS)

[1] Jen O'Hara, being first duly sworn on oath, deposes and says that she is of legal age and is a resident of Grand Forks, North Dakota; that on the 3rd day of March, 2016, she served by first class U.S. Mail or through the North Dakota Odyssey electronic filing system, as indicated, a copy of the following documents in the above-entitled matter:

- **Objection of Brent Baldwin, Baldwin Farms, Inc., and Duane Altendorf to Petitioner's Motion to Approve Report and Recommendation of Trustee, Approve Payments, and Discharge Trustee and to the Petitioner's Report and Recommendation of Trustee**

and further, that said documents, indicated below as mailed, were sent by first class U.S. Mail, with postage duly prepaid, mailed from the Grand Forks, North Dakota, Post Office addressed as shown:

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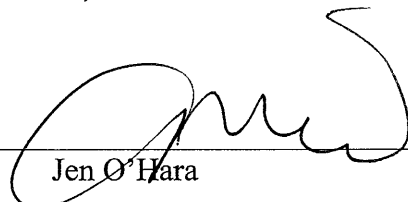
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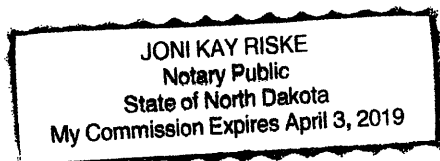
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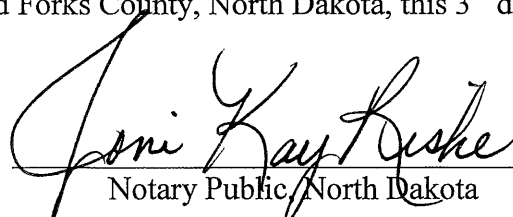
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Jen O'Hara

Subscribed and sworn to before me in Grand Forks County, North Dakota, this 3rd day of March, 2016.





Joni Kay Riske
Notary Public, North Dakota