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Filing Desc: Objection of Ronald Adams, Nicholas Adams, Chuck Nelson, and WJS Nelson to the Petitioner's Motion to Approve Report and Recommendation of Trustee, Approve Payments, and Discharge Trustee

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275 GE-15-36 Filed: 3/3/2016 Pages: 7
Notification of Service - Objection to Motion to Approve R & R

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IN DISTRICT COURT, GRAND FORKS COUNTY, STATE OF NORTH DAKOTA

| | | |
|------------------------------------|---|--------------------------------|
| Public Service Commission, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | CIVILNO. 18-2015-cv-00240 |
| |) | |
| Grand Forks Bean Company, Inc., |) | |
| Auto-Owner Insurance Company, |) | |
| |) | |
| Respondents. |) | OBJECTION OF RONALD ADAMS, |
| |) | NICHOLAS ADAMS, CHUCK NELSON, |
| vs. |) | AND WJS NELSON TO THE |
| |) | PETITIONER'S MOTION TO APPROVE |
| Bremer Bank, National Association, |) | REPORT AND RECOMMENDATION |
| |) | OF TRUSTEE, APPROVE PAYMENTS, |
| Applicant for Intervention, |) | AND DISCHARGE TRUSTEE |

PSC Case No. GE-15-36

[¶1] Claimants Ronald Adams, Nicholas Adams, Chuck Nelson, and WJS (John Nelson and Steve Nelson), by and through their attorney, Russell J. Melland, for their objections to the Petitioner's Motion to Approve Report and Recommendation of Trustee, Approve Payments and Discharge Trustee (the "Report"), state as follows:

[¶2] Based on the market price used by the Petitioner, the Report states that the amount of the allowed claim for Ronald Adams is \$169,254.50. See Court Doc. No. 155. This amount is not correct. As indicated in the Amended Claim of Ronald Adams, dated January 29, 2016 (Court Doc. Nos. 208-212), Ronald Adams' claim is in the amount of \$236,828.54, together with interest accruing from and after October 15, 2013.

[¶3] Based on the market price used by the Petitioner, the Report states that the amount of the allowed claim of Nicholas Adams is \$19,770.05. See Court Doc. No. 155. This amount is not

correct. As indicated in the Amended Claim of Nicholas Adams, dated January 29, 2016 (Court Doc Nos. 203-204, Nicholas Adams' claim is in the amount of \$34,524.90, 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 the allowed claim of Chuck Nelson is \$28,616.14. See Court Doc. No. 155. This amount is not correct. As indicated in the Amended Claim of Chuck Nelson, dated January 29, 2016 (Court Doc Nos. 205-207, Chuck Nelson's claim is in the amount of \$49,973.04, together with interest accruing from and after October 15, 2013.

[¶5] Based on the market price used by the Petitioner, the Report states that the amount of the allowed claim of WJS Nelson is \$34,835.80. See Court Doc. No. 155. This amount is not correct. As indicated in the Amended Claim of WJS Nelson, dated February 25, 2016 (Court Doc Nos. 214-215), WJS Nelson's claim is in the amount of \$63,650, which is the market rate in effect on May 30, 2014, \$38.00 cwt with a quantity of 1,675 cwt of beans, together with interest from and after May 30, 2014. See Exhibit A, USDA market prices.

[¶6] The Report incorrectly reflects the amount for the claims of Ronald Adams, Nicholas Adams, Chuck Nelson, and WJS Nelson because the Petitioner selected 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 either 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 when GF Bean neglected or was unable upon proper demand to pay for beans purchased or stored establishes the date of insolvency for all claims in this case. *Id.* The undisputed

evidence in this case is that by October 15, 2013, Ronald Adams, Nicholas Adams, and Chuck Nelson and other claimants, had each made proper demand for the sale of beans delivered and accepted upon Grand Forks Bean Company, Inc. and payment on their respective beans, and Grand Forks Bean, Inc., refused, neglected or was unable to do so. WJS Nelson delivered beans to Grand Forks Bean Company, Inc. for immediate sale on the date of delivery (April 15, 2014). Giving Respondent 45 days would equate to May 30, 2014. Therefore, by operation of N.D.C.C. §60-04-02, the proper date of insolvency is October 15, 2013 for Ronald Adams, Nicholas Adams, and Chuck Nelson. The proper date of insolvency for WJS Nelson's claim is no later than May 30, 2014.

[¶7] The significance of the selection of the proper date of insolvency is that the date of insolvency establishes the price that should 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 and the prevailing market price for WJS for May 30, 2014 was \$38 per cwt. When applying the correct \$38/cwt prevailing market price to the undisputed quantity of beans, the correct allowed claim for Ronald Adams is \$236,828.54 (6,232.33 cwt x \$38/cwt), for Nicholas Adams is \$34,524.90 (908.55 cwt x \$38/cwt), for Chuck Nelson is \$49,973.04 (1,315.08 cwt x \$38/cwt), and for WJS Nelson is \$63,650 (1,675 cwt x \$38/cwt).

[¶8] The Report also incorrectly assesses storage charges against the claims of Ronald Adams, Nicholas Adams, Chuck Nelson, and WJS Nelson. The Report recommends the assessment of storage charges at the rate of \$.15 per month per cwt from May 1, 2014 through December 18, 2014. There is no basis for such a position. The evidence at trial will establish that Ronald

Adams, Nicholas Adams, Chuck Nelson and WJS Nelson claimants 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 Ronald Adams, Nicholas Adams, Chuck Nelson, and WJS Nelson consistently requested sale and payment for their beans. The fact that Grand Forks Bean Company, Inc. neglected, was unable or unwilling to satisfy those demands is evidence of insolvency and does not warrant the imposition of storage charges for the period May 1, 2014 through December 18, 2014 against Ronald Adams, Nicholas Adams, Chuck Nelson, and WJS Nelson. 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.

[¶9] The Report does provide interest on the claims of Ronald Adams, Nicholas Adams, Chuck Nelson, and WJS Nelson is to be paid, as per N.D.C.C. §60-04-09, but does not then calculate the amount of such interest. Ronald Adams, Nicholas Adams, Chuck Nelson, and WJS Nelson are entitled to accrue interest on their claims from and after the date of the insolvency of Grand Forks Bean Company, Inc.

[¶10] 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.” Ronald Adams, Nicholas Adams, Chuck Nelson, and WJS Nelson, to avoid a possible waiver under N.D.C.C. §60-04-09, do hereby reserve the right to object to the amount, reasonableness or necessity of such expenses at the later hearing on the matter.

[¶11] WHEREFORE, Ronald Adams, Nicholas Adams, Chuck Nelson, and WJS Nelson, state that the Report should be approved by the Court subject to the following modifications:

A. The claim of Ronald Adams is in the sum of \$236,828.54, together with interest accruing from and after October 15, 2013.

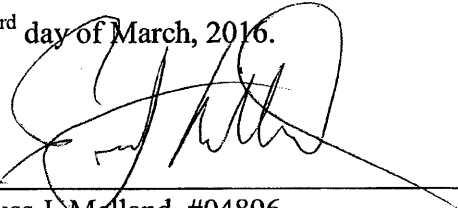
B. The claim of Nicholas Adams is in the sum of \$35,524.90, together with interest accruing from and after October 15, 2013.

C. The claim of Chuck Nelson is in the sum of \$49,973.04, together with interest accruing from and after October 15, 2013.

D. The claim of WJS Nelson is in the sum of \$63,650, together with interest accruing from and after May 30, 2013.

E. 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.

Respectfully submitted and dated this 3rd day of March, 2016.



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