

Crockford, Konrad S.

From: efilmingmail@tylerhost.net
Sent: Thursday, December 20, 2018 08:39
To: Tiffany Knopik
Subject: Filing Accepted for Case: 35-2018-CV-00088; Public Service Commission vs. Hunter Hanson d/b/a NoDak Grain, et al.; Envelope Number: 3247015



**North Dakota
Court System**

Filing Accepted

Envelope Number: 3247015
Case Number: 35-2018-CV-00088
Case Style: Public Service Commission vs.
Hunter Hanson d/b/a NoDak Grain, et al.

The filing below was reviewed and has been accepted by the clerk's office. You may access the file stamped copy of the document filed by clicking on the below link.

Filing Details	
Court	Pierce County - Northeast District
Case Number	35-2018-CV-00088
Case Style	Public Service Commission vs. Hunter Hanson d/b/a NoDak Grain, et al.
Date/Time Submitted	12/19/2018 4:52 PM CST
Date/Time Accepted	12/20/2018 8:38 AM CST
Accepted Comments	
Filing Type	Application
Filing Description	Application for Appointment as Trustee and for Ex Parte Order, and Motion to Join Surety as Party
Activity Requested	EFile
Filed By	Mitchell Armstrong
Filing Attorney	Mitchell Armstrong

Document Details	
Lead Document	Application for Appointment as Trustee and for Ex Parte Order, and Motion to Join Surety as Party.pdf
Lead Document Page Count	10
File Stamped Copy	View Stamped Document
This link is active for 30 days. If the link above is not accessible, copy this URL into your browser's address bar to view the document:	

<https://northdakota.tylerhost.net/ViewDocuments.aspx?FID=ede8dd60-46db-4d89-bbb8-d8d642aa01f3>

For technical assistance, contact your service provider or
North Dakota Court's Information Technology Department 701-328-4218
Please do not reply to this email. It was automatically generated.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF PIERCE

NORTHEAST JUDICIAL DISTRICT

Public Service Commission

Petitioner,

vs.

Hunter Hanson
d/b/a NoDak Grain

and

CorePointe Insurance Company

and

Philadelphia Indemnity Insurance Company

Respondents.

PSC Case No. GE-18-395

CIVIL NO. 35-2018-CV-00088

**APPLICATION FOR
APPOINTMENT AS TRUSTEE
AND FOR *EX PARTE* ORDER,
AND MOTION TO
JOIN SURETIES AS PARTIES**

[¶ 1] The North Dakota Public Service Commission (Commission), based upon all documents filed herewith including the *Affidavit of Konrad S. Crockford in Support of Application*, alleges as follows:

1.

[¶ 2] Hunter Hanson d/b/a NoDak Grain, operates licensed grain warehouses at Tunbridge and Rohrville, North Dakota, under North Dakota Century Code chapters 60-02 and 60-04.

2.

[¶ 3] Hunter Hanson d/b/a NoDak Grain, 2373 65 1/2 Street Northeast, Rugby, North Dakota 58368, operates the grain warehouse at Tunbridge, North Dakota under license number 1345 and operates the grain warehouse at Rohrville, North Dakota under license number 1349.

3.

[¶ 4] North Dakota Century Code section 60-02-09 requires a license applicant to file a bond before a license can be issued, and the bond must be continuous unless a 90-day notice of cancellation is provided consistent with the statute. Two surety bonds are on file with the Commission for the Hunter Hanson d/b/a NoDak Grain Rohrville and Tunbridge, North Dakota grain warehouse licenses. As part of the licensing process, a bond was filed for \$165,000 and identified as number PB11511002782 with Philadelphia Indemnity Insurance Company, One Bala Plaza #100, Bala Cynwyd, Pennsylvania 19004, as surety. On August 24, 2018, NoDak Grain filed a surety bond with the Commission in the amount of \$150,000 and identified as number 657072C with CorePointe Insurance Company, 251 Little Falls Drive, Wilmington, Delaware 19808, as surety. On October 16, 2018, the Commission received a Cancellation Notice from Philadelphia Insurance Company via certified mail for bond number PB11511002782. On November 23, 2018, the Commission received a Notice of Cancellation from Corepointe Insurance Company via certified mail for bond number 657072C. North Dakota Century Code section 60-02-09.1 provides that a surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the Commission. The surety of a bond is not relieved, released, or discharged from

any liability already accrued or which accrues before the expiration of the ninety-day period.

4.

[¶ 5] On November 8, 2018, the Commission's Compliance Division staff (Staff) received a phone call from Dan Stommes, President of East Central Grain Marketing, informing Staff that East Central Grain Marketing had brokered grain purchase contracts between Midwest Grain Trading and producers and elevators. East Central Grain Marketing stated they had received phone calls from customers and were reporting multiple checks written by NoDak Grain that were returned by the bank indicating nonsufficient funds (NSF).

5.

[¶ 6] On November 9, 2018, Staff contacted Shawna Thronsedt, with Midwest Grain Trading, to discuss the NoDak Grain NSF checks reported by East Central Grain Marketing on behalf of East Central Grain Marketing's clients. Ms. Thronsedt stated that the NoDak Grain checks in question were written from the incorrect account and should have been written from the Midwest Grain Trading account. When asked when the correct checks would be issued, Ms. Thronsedt stated that she was working on reissuing the checks from the correct account.

6.

[¶ 7] On November 14, 2018, Staff received an email with attachments from Jan Leishman with Shafer Commodities, Inc. of Morden, Manitoba, alleging Shafer Commodities, Inc. has not been paid for yellow peas sold to Hunter Hanson, owner of

Midwest Grain Trading and delivered to the public warehouse facilities licensed by Hunter Hanson d/b/a NoDak Grain at the Tunbridge and Rohrville, North Dakota locations.

7.

[¶ 8] On November 14, 2018, Commission Compliance Division Grain Warehouse Inspectors visited NoDak Grain at both the Rohrville and Tunbridge locations and measured the grain inventory. The inspectors concluded that the inventory at Rohrville consisted of approximately 2,900 bushels of amber durum, 3,300 bushels of barley, 1,100 hundredweight of canola, and 37,190 hundredweight of yellow peas. The inspectors could not determine the condition of the commodities at the time of measurement. The inspectors concluded that the inventory at Tunbridge consisted of approximately 27,900 hundredweight of yellow peas. The inspectors could not determine the condition of the yellow peas at the time of measurement.

8.

[¶ 9] On November 14 and 15, 2018, Commission Compliance Division Grain Warehouse Inspectors visited the Midwest Grain Trading Offices in Devils Lake, North Dakota. During this visit, inspectors copied Midwest Grain Trading and NoDak Grain unsettled customer files, but were not able to gather additional records for either Midwest Grain Trading or NoDak Grain.

9.

[¶ 10] On November 15, 2018, in response to communications with Hunter Hanson and his attorney, Staff contacted Hunter Hanson and his attorney, Kelly Swenseth, Swenseth Law Office, PLLC in Devils Lake, North Dakota to discuss the alleged NSF checks and potential unpaid grain claims. Mr. Hanson informed Staff that the checks should not have

been sent and that there was a misunderstanding with Midwest Grain Trading staff who sent the checks earlier than they were supposed to. He also indicated the checks were issued from the wrong account. Staff asked why this situation had not been remedied. Mr. Hanson stated that while on vacation some of the grain should have been sold two weeks earlier and, due to an employee mistake at the Rohrville location, some of the peas, barley, and canola suffered water damage. Mr. Hanson added that he contacted a representative of the insurance company to file a claim with the insurance company that provides insurance on the grain at the two NoDak Grain facilities. Staff then asked Mr. Hanson if he has the ability to pay these claims. Mr. Hanson stated that he did not have the ability to pay claimants that day. Staff and Mr. Hanson discussed the possibility of entering into a stipulation to protect potential trust assets, which never materialized. Additionally, Staff requested the additional records for Midwest Grain Trading and NoDak Grain which Mr. Hanson agreed to provide, which have not been provided to date.

10.

[¶ 11] On November 17, 2018, the Commission received an email with attachments from Shawn Madsen, Operations Manager for Southland Pulse, Inc. of Estevan, Saskatchewan, alleging Southland Pulse, Inc. has not been paid for yellow peas sold to Midwest Grain Trading and delivered to the NoDak Grain public grain warehouse at the Rohrville, North Dakota location. Mr. Madsen provided further information to Staff on November 19, 2018. Staff requested Mr. Madsen provide a cover letter and combine his claim documentation into one document, to ensure all information was accounted for. Mr. Madsen submitted this information on November 20, 2018.

11.

[¶ 12] On November 19, 2018, the Commission received an email with attachments from Art Stacey, an attorney acting for Delmar Commodities Ltd. of Winkler, Manitoba, alleging a check written by Midwest Grain Trading to Delmar Commodities Ltd. to pay for yellow peas was returned unpaid, and that Delmar Commodities Ltd. has not been paid for additional yellow peas sold to Midwest Grain Trading and delivered to the NoDak Grain public grain warehouse at the Rohrville, North Dakota location. Staff requested further documentation to review the claim filed by Delmar Commodities Ltd. Additional documentation was provided by Keith Friesen of Delmar Commodities Ltd. on November 20, 2018. Mr. Friesen stated that some of the documents were partially illegible and resubmitted these documents on November 21, 2018.

12.

[¶ 13] On November 20, 2018, the Commission received an email with attachments from Dan Mostad, with Berthold Farmers Elevator, LLC of Berthold, North Dakota, alleging Berthold Farmers Elevator, LLC has not been paid for yellow peas sold to Midwest Grain Trading.

13.

[¶ 14] Between November 9 and November 27, 2018, Staff received over 50 calls from elevators and producers who have sold grain to Midwest Grain Trading, and had grain picked up by Midwest Grain Trading or delivered grain to NoDak Grain. The persons who have called about this matter indicated that Midwest Grain Trading or NoDak Grain, or both, issued checks to pay for grain, and that the checks have been returned unpaid indicating NSF, stop payment, or had been canceled, or that Midwest Grain Trading or

NoDak Grain has otherwise not paid amounts Midwest Grain Trading or NoDak Grain owes for grain.

14.

[¶ 15] Staff concluded that the matter could not be resolved outside an insolvency proceeding. As a result, on November 21, 2018, Staff recommended the Commission issue an *Ex Parte* Cease and Desist Order against Hunter Hanson, owner of Midwest Grain Trading, and Hunter Hanson d/b/a NoDak Grain, as Staff had good cause to conclude additional sellers of grain may suffer immediate economic loss, damage or injury, and claimants may suffer additional injury, if Hunter Hanson d/b/a Midwest Grain Trading and d/b/a NoDak Grain continues purchasing, selling, receiving or delivering grain.

15.

[¶ 16] On November 21, 2018, the Commission issued an *Ex Parte* Cease and Desist Order against Hunter Hanson, owner of Midwest Grain Trading, and Hunter Hanson dba NoDak Grain, ordering Hunter Hanson, owner of Midwest Grain Trading to cease and desist all roving grain buyer activities in North Dakota, including the purchase, sale, receipt, and delivery of grain and Hunter Hanson dba NoDak Grain to cease and desist all grain warehouse activities in North Dakota, including the purchase, sale, receipt, and delivery of grain.

16.

[¶ 17] The Commission has been informed and, based upon its investigation, believes that there are outstanding obligations for unpaid claims for grain sold to Hunter Hanson

d/b/a NoDak Grain, at the licensed grain warehouses in Tunbridge and/or Rohrville, North Dakota, under North Dakota Century Code chapters 60-02 and 60-04 for which bond protection is available under the provisions of North Dakota Century Code section 60-02-09 and for any credit-sale contracts for which protection is available from the credit-sale contract indemnity fund under North Dakota Century Code sections 60-10-04 and 60-10-05.

17.

[¶ 18] Hunter Hanson d/b/a NoDak Grain, is insolvent under North Dakota Century Code chapter 60-04, as a result of being unable, upon proper written demand, to make payment for grain purchased or marketed or make redelivery for grain delivered.

18.

[¶ 19] The Commission is legally entitled to be appointed trustee of the trust fund provided under North Dakota Century Code chapter 60-04.

19.

[¶ 20] Bond proceeds will be needed to redeem outstanding receipts issued by NoDak Grain. 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 receiptholders, 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.

20.

[¶ 21] If there are any credit-sale contract claims, 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 warehouse or a 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.

[¶ 22] **WHEREFORE** the Public Service Commission respectfully requests:

1. That the Court declare Hunter Hanson d/b/a NoDak Grain **INSOLVENT** within the meaning of North Dakota Century Code chapter 60-04 and establish the date of insolvency as a date on or before November 14, 2018, the date that the first claim for collection of outstanding funds owed for grain sold was filed.
2. That the Court **APPOINT** the Public Service Commission as trustee of the trust fund under North Dakota Century Code section 60-04-03.
3. That the Court **ISSUE** an *Ex Parte* Order to preserve and protect the potential assets of the trust fund until the Court issues its order denying or granting the application.

[¶ 23] That the Court **JOIN** CorePointe Insurance Company, 251 Little Falls Drive, Wilmington, Delaware 19808, and Philadelphia Indemnity Insurance Company, One Bala Plaza #100, Bala Cynwyd, Pennsylvania 19004, as sureties on the bonds for NoDak Grain as respondents in this action.

[¶ 24] Bismarck, North Dakota, this 19th day of December, 2018.



Illona A. Jeffcoat-Sacco (ND ID No.: 03315)
ijs@nd.gov
Special Assistant Attorney General
State Capitol – 12th Floor
600 East Boulevard Avenue – Department 408
Bismarck, ND 58505-0480
701-328-2400

and

Mitchell D. Armstrong (ND ID No.: 05892)
marmstrong@smithporsborg.com
Brian D. Schmidt (ND ID # 07498)
bschmidt@smithporsborg.com
Sarah E. Wall (ND ID # 07892)
swall@smithporsborg.com
Special Assistant Attorneys General
122 East Broadway Avenue
PO Box 460
Bismarck, ND 58502-0460
701-258-0630

Attorneys for the Public Service Commission