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

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| 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 | Brief |
| Filing Description | Brief in Support of Application for Appointment as Trustee and Ex Parte Order, and Motion to Join Surety |
| Activity Requested | EFile |
| Filed By | Mitchell Armstrong |
| Filing Attorney | Mitchell Armstrong |

| Document Details | |
|---------------------------------|--|
| Lead Document | Brief in Support of Application for Appointment as Trustee and Ex Parte Order, and Motion to Join Surety.pdf |
| Lead Document Page Count | 6 |
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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

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

[¶ 1] The North Dakota Public Service Commission (Commission) has jurisdiction over grain warehouses under North Dakota Century Code chapters 60-02 and 60-04. North Dakota Century Code chapter 60-04 provides for the appointment of the Commission as trustee of the assets of a grain warehouse upon the filing of a notice with the Commission that the grain warehouse has defaulted in the payment for grain purchased by the warehouse.

[¶ 2] 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).

[¶ 3] 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.

[¶ 4] 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.

[¶ 5] 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.

[¶ 6] 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.

[¶ 7] 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, but have not been provided to date.

[¶ 8] 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.

[¶ 9] 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.

[¶ 10] 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.

[¶ 11] 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 have been canceled, or that Midwest Grain Trading or

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

[¶ 12] The Commission is informed and, and based upon its investigation, believes there are outstanding obligations for unpaid claims for grain sold to Hunter Hanson d/b/a NoDak Grain, which operates licensed grain warehouses at Tunbridge and 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.

[¶ 13] It is in the best interest of all claimants that the Court declare Hunter Hanson d/b/a NoDak Grain, insolvent and establish the date of insolvency as a date on or before November 14, 2018, the date the first claim for collection of outstanding funds owed for grain sold was filed, and that the Commission be appointed Trustee, and be given the powers under North Dakota Century Code chapter 60-04 so that all claimants will be treated fairly.

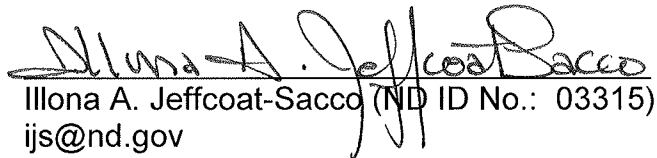
[¶ 14] It is also in the best interests of the claimants and the parties to this action that an *ex parte* order be issued to preserve and protect the potential assets of the trust fund until the Court issues its order granting or denying the application.

[¶ 15] Further, it is also in the best interest of all claimants that the sureties be joined as parties as provided by North Dakota Century Code section 60-04-03.3.

[¶ 16] Upon the insolvency, the Commission has the authority under North Dakota Century Code section 60-10-05 to make payment to any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated under the contract.

[¶ 17] The Court has jurisdiction under North Dakota Century Code section 60-04-03, which provides for the filing of this action in the District Court, Northeast Judicial District. A companion case against Hunter Hanson d/b/a Midwest Grain Trading, a licensed roving grain buyer, is being filed contemporaneously in Burleigh County pursuant to North Dakota Century Code section 60-02.1-29. The Commission reserves the ability to consolidate/join those actions as appropriate.

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



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