

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Terri Fritz,) GDC - 446
Grain Program Manager, Grain)
Warehouse Department, Nebraska)
Public Service Commission,)
)
)
COMPLAINANT,)
)
v.)
)
Banghart Properties, LLC,)
a.k.a Fearless Grain Marketing)
Storage and Arbitrage, a.k.a)
Fearless Grain Marketing,)
a.k.a Fearless Grain,)
Gettysburg, South Dakota,)
)
)
RESPONDENT.) COMPLAINT

The Grain Warehouse Department of the Nebraska Public Service Commission ("Commission"), by and through its Grain Program Manager, Terri Fritz, states and alleges as follows:

1. Complaint, Terri Fritz, is the Grain Program Manager of the Grain Warehouse Department of the Nebraska Public Service Commission.
2. Respondent is an Applicant for a Grain Dealer's license with the Nebraska Public Service Commission.
3. Upon information and belief, Respondent is a South Dakota Limited Liability Company with its principal office located at 126 Hilltop Drive, P.O. Box 93, Gettysburg, SD 57442.
4. Pursuant to the Nebraska Grain Dealer Act (Neb. Rev. Stat. §§ 75-901 to 75-910), the Commission has authority to license all grain dealers doing business in the State of Nebraska.
5. Pursuant to Neb. Rev. Stat. § 75-902, a Grain Dealer is defined as any person, partnership, limited liability company, corporation or association that buys grain from a Nebraska producer for the purpose of selling such grain

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or acts as an employee or agent of a buyer or seller for purposes of collective bargaining in the marketing of grain.

6. Pursuant to Neb. Rev. Stat. § 75-903, all grain dealers doing business in Nebraska are required to be licensed by the Commission. To procure and maintain a license, a grain dealer shall: pay an annual fee established by the Commission; file an appropriate security for the benefit of any producer who files a valid claim arising from a sale to a grain dealer; and file a reviewed or audited fiscal year-end financial statement prepared by an independent certified public accounting firm.
7. Pursuant to Neb. Rev. Stat. § 75-903.02, as part of the application process for a Grain Dealer license, a primary party of the applicant shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol.¹
8. Pursuant to Neb. Rev. Stat. § 75-904, upon taking possession of grain from a seller each grain dealer shall issue a receipt, contract, bill of lading, or other written communication to the seller that includes the provisions of Neb. Rev. Stat. § 75-905 and be in such form as the Commission's rules and regulations require.
9. Pursuant to Neb. Rev. Stat. § 75-905, no seller shall have recourse to the grain dealer's security unless the seller: demands payment from the grain dealer within fifteen days after the date of the last shipment of any contract; negotiates any negotiable instrument issued as payment for the grain by the grain dealer within fifteen days after its issuance; and notifies the Commission within fifteen days after any apparent loss to be covered under the terms of the grain dealer's security.²
10. Pursuant to Neb. Rev. Stat. § 75-907, "[t]he commission may adopt and promulgate all rules and regulations necessary to carry out the Grain Dealer Act."

¹ See also 291 Neb. Admin. Code §08-003.02C.

² See also 291 Neb. Admin. Code §08-003.04F.

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11. Pursuant to Neb. Rev. Stat. § 75-910, the Commission may assess a civil penalty, pursuant to Neb. Rev. Stat. § 75-156, against any person who violates the Grain Dealer Act.³
12. The Commission has enacted rules and regulations in Title 291, Neb. Admin. Code Chapter 8 to carry out the Grain Dealer Act, and which have, at all times relevant to this Complaint, been in full force and effect.
13. Title 291 Neb. Admin. Code §08-001.01J defines a grain dealer as "[a]ny person, other than a feeder or custom feeder of livestock or poultry or a grain warehouse licensed under the Grain Warehouse Act or located in Nebraska and licensed under the United States Warehouse Act that does not buy, sell, or transport grain other than that is received at its licensed warehouse facilities, who (a) buys grain from the producer within this state for purposes of selling such grain, or (b) acts as an employee or agent of a buyer or seller for purposes of collective bargaining in the marketing of grain."
14. Title 291 Neb. Admin. Code § 08-003.01 provides that all grain dealers doing business in Nebraska are required to procure and maintain a license from the Commission.
15. Title 291 Neb. Admin. Code § 08-003.05A provides that each grain dealer, upon taking possession of grain from a seller, shall issue a writing, in the form of a receipt, contract, bill of lading or other written communication(s) to the seller, or its agent that includes, among other things, the following specific "Warning to Seller" language, conforming to Neb. Rev. Stat. § 75-905:

"WARNING TO SELLER: You will have no recourse to the grain dealer's security posted with the Nebraska Public Service Commission (NPSC) unless you are a Nebraska Producer and you: (1) demand payment from the grain dealer within fifteen (15) days after the date of the last shipment of any contract; (2) negotiate any negotiable

³ See also 291 Neb. Admin. Code §08-003.09.

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instrument issued as payment for your grain by the grain dealer within fifteen (15) days after its issuance; and, (3) notify the NPSC, PO Box 94927, Lincoln, NE 68509-4927, within fifteen (15) days after an apparent loss. The grain dealer's security shall provide security for direct delivery grain until a post-direct delivery storage position is created for a period not to exceed fifteen (15) days after date of the last shipment of grain. Direct Delivery of grain may affect the eligibility of the grain for participation in federal price support programs.

Nebraska Law defines a producer as the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of grain produced on that land."

16. Title 291 Neb. Admin. Code § 08-003.05A8 provides that all receipts, contracts, bills of lading or other written communication shall be pre-numbered and copies shall be maintained in numeric order.
17. Pursuant to Neb. Rev. Stat. § 75-156, each violation of the above-described sections is punishable by civil penalty of up to ten thousand dollars (\$10,000) per violation, per day, against any person who violates the Grain Dealer Act. Any such civil penalty may not exceed two million dollars (\$2,000,000) per year for each violation.
18. On September 8, 2021, Complainant sent Respondent a letter stating that a Grain Dealer license is required in order for Respondent to purchase grain from Nebraska producers and providing information on the application process. In that letter, Complainant stated that if Respondent had any active contracts with Nebraska producers, those contracts would need to be cancelled and all grain dealer activity must cease until the Commission grants a license.

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19. On September 15, 2021, Respondent filed an application for a Grain Dealer's license (Application No. 3052). However, Respondent failed to file a bond with the commission;⁴ failed to submit a year-end financial statement prepared by a Certified Public Accountant;⁵ failed to file a copy of the grain purchase contract including the required warning to seller language;⁶ and failed to complete the required background check.⁷
20. On October 4, 2021, the department was made aware that Respondent had advertised it was buying specific commodities from Nebraska producers prior to having its grain dealer application approved. Based upon conversations with Respondent's staff, the department became concerned Respondent was operating without a Grain Dealer License.
21. On October 12, 2021, the Grain Department sent a second letter, via certified mail, to Respondent stating the company must cease any Grain Dealer operations until they complete the application process and could be granted a license. As part of that letter, the department requested Respondent provide all contracts the company entered into with Nebraska producers. A deadline for action was provided.
22. On October 14, 2021, Complainant became aware that Respondent entered into contracts with Nebraska producers to purchase various amounts of commodities on at least twelve (12) separate occasions on the following dates:
 - a. February 25, 2021;
 - b. March 1, 2021;
 - c. March 12, 2021;
 - d. March 16, 2021;
 - e. March 17, 2021;
 - f. March 23, 2021;
 - g. May 18, 2021;
 - h. July 6, 2021;
 - i. July 16, 2021;
 - j. September 15; and

⁴ See 291 Neb. Admin. Code §08-003.04.

⁵ See 291 Neb. Admin. Code §08-003.03.

⁶ See 291 Neb. Admin. Code §08-003.05A.

⁷ See 291 Neb. Admin. Code §08-003.02(C).

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- k. September 20, 2021
23. Complainant conducted a review of the contracts and accompanying documentation provided and discovered that Respondent failed to provide the specific "Warning to Seller" language as required by Commission rule on the aforementioned contracts.
 24. On October 14, 2021, Complainant further became aware that Respondent performed on a portion of the aforementioned contracts entered into with Nebraska producers, indicated by Respondent issuing ticket receipts, by purchasing various amounts of commodities from Nebraska producers on at least twenty-nine (29) separate occasions on the following dates:
 - a. September 16, 2021;
 - b. September 20 - 23, 2021;
 - c. September 26 - 30, 2021;
 - d. October 3, 2021; and
 - e. October 7, 2021
 25. Respondent provided Complainant with information regarding all twenty-nine (29) ticket receipts; however, only copies of a select few of receipts were provided by Respondent. Based on a review of the few receipt copies provided, Respondent also did not include the specific "Warning to Seller" language on the aforementioned ticket receipts as well. Complainant has reason to believe that the copies of ticket receipts provided are reflective of a standard practice of Respondent.
 26. Complainant alleges that Respondent performed actions as a Grain Dealer in the State of Nebraska without a valid Grain Dealer License issued by the Commission in violation of Neb. Rev. Stat. § 75-903 and 291 Neb. Admin. Code § 08-003.01.
 27. Further, Complainant alleges that Respondent violated Neb. Rev. Stat. § 75-904 and 291 Neb. Admin. Code § 08-003.05A by taking possession of grain from a seller without issuing a receipt, contract, bill of lading, or other written communication conforming to the Commission's Rules and Regulations.
 28. Further, Complaint alleges that Respondent violated 291 Neb. Admin. Code § 08-003.05A8 by providing receipts,

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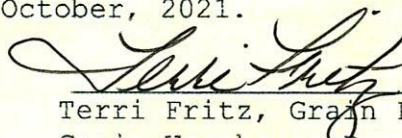
contracts, bills of lading or other written communications that failed to be pre-numbered and maintained in numeric order.

29. Complainant alleges that Respondent has and continues, to operate without a Grain Dealer License.

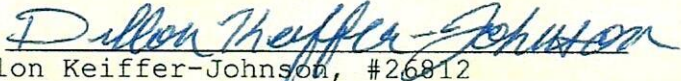
WHEREFORE, Complainant prays that the Commission

- a) Serve the Respondent with a copy of this Complaint;
- b) Enter an Order fixing a time for hearing;
- c) Enter an Order requiring Respondent to cease and desist any current and future operations as a grain dealer within the State of Nebraska;
- d) After Hearing, Pursuant to Neb. Rev. Stat. § 75-156 and Title 291 Neb. Admin. Code, Chapter 8, § 003.09 assess appropriate civil penalties;
- e) Take any other action deemed appropriate under the law.

Dated this 21st day of October, 2021.



Terri Fritz, Grain Program Manager
Grain Warehouse Department
Nebraska Public Service Commission
300 The Atrium Building
1200 N Street, P.O. Box 94927
Lincoln, Nebraska 68509

BY: 
Dillon Keiffer-Johnson, #26812
Staff Attorney

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VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

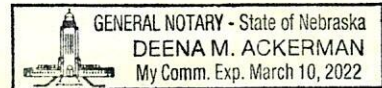
Terri Fritz, being first duly sworn, deposes and says that she is Grain Program Manager of the Nebraska Public Service Commission Grain Warehouse Department; that she has read the allegations contained herein and understands them to be true to the best of her knowledge and belief.



Terri Fritz, Grain Program Manager
Grain Warehouse Department

SUBSCRIBED AND SWORN to before me this 21st day of October, 2021.

Deena M. Ackerman
Notary Public



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Complaint was sent by Certified United States Mail postage prepaid on October 21, 2021, to the following:

Banghart Properties, LLC
Jan Banghart
P.O. Box 93
Gettysburg, SD 57442

Konrad Law, Prof. LLC
Robert T. Konrad
1110 East Sioux Avenue
Pierre, SD 57501


Dillon Keiffer Johnson, 26812

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NOTICE

1. Pursuant to Neb. Admin. R. & Regs., Title 291, Chapter 1, Section 004.02, the Respondent(s) is hereby notified that an answer to this complaint shall be filed and shall admit or deny each material allegation of the complaint. The answer shall assert any affirmative defenses which the Respondent may assert. The answer shall be filed with the Commission within twenty (20) days after service of the complaint. Except for good cause shown, failure to answer will be construed as an admission of the allegations in the complaint. Failure to file an answer or to appear at the hearing allows the Commission to (a) immediately enter an order revoking, suspending, or modifying a certificate of public convenience and necessity and/or assessing a civil penalty as provided by law; or (b) to proceed with the hearing and receive evidence of the alleged violation and to revoke, suspend, or modify a certificate of public convenience and necessity and/or assess a civil penalty as provided by law.
2. Pursuant to Neb. Rev. Stat. Section 75-903.01, the Commission, after hearing, shall make any order as it deems just and reasonable, including but not limited to, an order revoking or suspending the license of any grain dealer for failure to comply with the requirements of the Grain Dealer Act or any rule or regulation adopted and promulgated pursuant to such act.
3. Pursuant to Neb. Rev. Stat. Section 75-156, the Commission may impose a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation per day up to two million dollars (\$2,000,000) per violation per year.
4. Upon failure to pay any civil penalty determined by the Commission, such unpaid civil penalty shall constitute a debt to the State of Nebraska and be collectible by civil action in the District Court of Lancaster County, Nebraska.