

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. GD-2986
Public Service Commission)
seeking to determine potential)
grain dealer claims to the) ORDER DETERMINING DEALER
security of previously licensed) CLAIMS
grain dealer, Able LLC, Auburn,)
Nebraska.) Entered: August 15, 2017

BY THE COMMISSION:

On May 1, 2017, Able, LLC (Able) surrendered its grain dealer license to the Nebraska Public Service Commission (Commission). On May 16, 2017, the Commission issued an order setting a hearing for July 12, 2017, to determine security coverage for sellers of grain to Able.

After the surrender of the license, the Commission's Grain Warehouse Department (Department) examined the records of Able and compiled possible claims based upon the information. Individual claim forms were mailed to all claimants identified in the records of Able notifying them of the hearing date. Claimants were asked to return claim forms no later than June 16, 2017, indicating whether they disputed the information and to provide any supporting documentation. Notice of the hearing was also published in several newspapers in the area affected by the closure in addition to the Daily Record, Omaha, Nebraska.¹ Copies of all claim forms returned by individual claimants prior to the date of the hearing, including any supporting documentation provided, were made part of the record.²

Hearing on this matter was held on July 12, 2017, at which time additional evidence was taken with respect to claims against the \$258,000.00 dealer bond pursuant to the Grain Dealer Act.³

All claims against the grain dealer bond are listed in Appendix A attached to this order. The prices established for claims for dealers were based upon the actual contract amounts. If grain was not priced, the price was set at \$3.21 per bushel for corn, \$8.75 per bushel for soybeans, and \$3.51 per bushel

¹ Exhibit 2.

² Exhibits 4-16, and 18. A spreadsheet summarizing claim information was created by the Department and is exhibit 17.

³ Neb. Rev. Stat. §§ 75-901 to 75-910 (2006 Cum. Supp.).

for wheat, based on market prices on the date of closure. Check off fees were determined by the May 1st prices, however no other fees have been determined at this time.

EVIDENCE

Mr. John Fecht, director of the Department testified generally regarding the process used by the Department in compiling possible dealer claims to the security. The original dealer license for Able was included as part of the record.⁴ A listing of possible dealer claimants who were sent claim forms in addition to supporting documentation was entered into the record.⁵

For the sake of brevity, the claims may be referred to throughout this order by the number assigned in Appendix A. The number of the dealer claim corresponds to the exhibit number assigned to that claimant's documentation and claim form. The Department sent claim forms to 14 potential claimants. One claimant, Kevin Wheeler, responded he had been paid for his grain and did not have a claim. One claimant disagreed because he had soybeans that were not listed on the original claim. He provided additional documentation and the Department agreed with his assessment.⁶ He also provided additional documentation at the hearing.⁷ The Commission did not specifically request testimony from any claimants. However, anyone wishing to testify regarding a claim was permitted to do so.

Mr. Wheeler was the only claimant to formally testify in order to provide the above referenced exhibit. Many claimants asked questions of the Department staff.

OPINION AND FINDINGS

Under its grain dealer license, Able was required to post grain dealer security payable to the Commission for the benefit of any producer or owner within the state who files a valid claim arising from a sale to the grain dealer during the time the bond is in force.⁸ Able posted said bond in the amount of \$258,000.00. Pursuant to the Grain Dealer Act:

⁴ Exhibit 3.

⁵ Exhibits 4-16, 18 and Department summary Exhibit 17.

⁶ Exhibit 15.

⁷ Exhibit 18.

⁸ Neb. Rev. Stat. § 75-903(2); Neb. Admin. Code Title 291, Ch. 8 § 3.04.

(1) No seller shall have recourse to the grain dealer's security unless the seller:

(a) Demands payment from the grain dealer within fifteen days after the date of the last shipment of any contract;

(b) Negotiates any negotiable instrument issued as payment for grain by the grain dealer within fifteen days after its issuance; and

(c) Notifies the commission within fifteen days after any apparent loss to be covered under the terms of the grain dealer's security.

(2) The grain dealer's security shall provide security for direct delivery grain until any post-direct delivery storage position is created for a period not to exceed fifteen days after the date of the last shipment of the contract.⁹

None of the claims presented to the Commission were within the fifteen day time frame. The most recent load contained within any of the claims was delivered on February 23, 2017.¹⁰ The last date any delivery could be made and the producer eligible for security coverage was April 14, 2017. Therefore, the Commission finds that all thirteen claims upon Able's dealer bond should be denied as the last delivery of grain for each claim was made outside the fifteen days permitted for security coverage.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that claims against the grain dealer bond issued for Able, LLC are denied as outlined herein and set forth in Appendix A.

IT IS FURTHER ORDERED that the Commission shall not call the security bond.

⁹ Neb. Rev. Stat. § 75-905.

¹⁰ Exhibit 17 K and J Wheeler last load of corn dated February 23, 2017.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 15th
day of August 2017.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Mary Reddin
Crystal L. Lardis

[Signature]
//s//Frank E. Landis
//s//Tim Schram

[Signature]
Chairman

ATTEST:

[Signature]
Executive Director

Appendix A

	Wheat	Corn	Milo	Soybeans	Oats			
		\$3.51	\$3.21	\$0.00	\$8.75	\$0.00		
CLAIMANT	CLAIM TYPE	GRAIN TYPE	QUANTITY BUSHELS	PRICE/ BUSHEL	GROSS VALUE	CHECKOFF	NET OF CHECKOFF	APPROVED CLAIM
4 Beverly Allen 1509 10th Street Auburn, NE 68305	Last Load 10/8/16	Corn	242.48	\$3.21	\$778.36	\$1.21	\$777.15	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
5 Dave Clarke 11825 S. 25th Street Bellevue, NE 68123	Last Load 10/8/16	Corn	484.95	\$3.21	\$1,556.69	\$2.42	\$1,554.27	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
6 John Coatney 73280 643A Avenue Peru, NE 68421 402-872-6185	Last Load 11/17/16	Corn	6,182.50	\$3.21	\$19,845.83	\$30.91	\$19,814.92	\$0.00
	Last Load 11/5/16	Soybeans	692.00	\$8.75	\$6,055.00	\$30.28	\$6,024.73	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
7 Marilyn Coatney 73280 643A Avenue Peru, NE 68421 402-872-7525	Last Load 11/17/16	Corn	1,470.00	\$3.21	\$4,718.70	\$7.35	\$4,711.35	\$0.00
	Last Load 11/5/16	Soybeans	692.00	\$8.75	\$6,055.00	\$30.28	\$6,024.73	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
8 Scott Coatney 73280 643A Avenue Peru, NE 68421	Last Load 11/17/16	Corn	1,470.00	\$3.21	\$4,718.70	\$7.35	\$4,711.35	\$0.00
	Last Load 11/5/16	Soybeans	692.00	\$8.75	\$6,055.00	\$30.28	\$6,024.73	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
9 Jim Kite 64244 726 Road Auburn, NE 68305 402-274-7154	Last Load 11/11/16	Corn	3,476.27	\$3.21	\$11,158.83	\$17.38	\$11,141.45	\$0.00
	Last Load 11/4/16	Soybeans	4,771.32	\$8.75	\$41,749.05	\$208.75	\$41,540.30	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
10 Kara Kugler 1200 Irish Pointe Place Lincoln, NE 68521 402-617-3142	Last Load 10/8/16	Corn	1,032.21	\$3.21	\$3,313.39	\$5.16	\$3,308.23	\$0.00
	Last Load 11/7/16	Soybeans	1,364.21	\$8.75	\$11,936.84	\$59.68	\$11,877.16	\$0.00
	Last Load 6/22/16	Wheat	505.00	\$3.51	\$1,772.55	\$2.53	\$1,770.03	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
11 Ramsey Farms Albert Ramsey 72696 Hwy 75 Auburn, NE 68305 402-414-2353	Last Load 10/13/16	Corn	12,292.85	\$3.21	\$39,460.05	\$61.46	\$39,398.59	\$0.00
	Last Load 11/14/16	Soybeans	2,028.50	\$8.75	\$17,749.38	\$88.75	\$17,660.63	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
12 Stan Stutheit 3107 D Road Syracuse, NE 68446	Last Load 11/14/16	Soybeans	535.67	\$8.75	\$4,687.11	\$23.44	\$4,663.67	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
13 Francis Seid 71607 651 Boulevard Falls City, NE 68355 402-245-5080	Deferred Payment	Corn		\$3.21	\$100,850.73	\$0.00	\$100,850.73	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
14 Kevin Wheeler 63859 725 Road Auburn, NE 68305 402-274-4573	Last Load 10/25/16	Corn	4,925.72	\$3.21	\$15,811.56	\$24.63	\$15,786.93	\$0.00
	Last Load 11/21/16	Soybeans	3,101.34	\$8.75	\$27,136.73	\$135.68	\$27,001.05	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
15 K and J Wheeler 63859 725 Road Auburn, NE 68305 402-274-4573	Last Load 2/23/17	Corn	13,753.21	\$3.21	\$44,147.80	\$68.77	\$44,079.03	\$0.00
	Last Load 11/17/16	Soybeans	7,376.65	\$8.75	\$64,545.69	\$322.73	\$64,222.96	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
16 Connie Biggers 158 La Plaza Way Ojai, CA 93023-5898 805-646-5033	Last Load 10/19/16	Soybeans	341.29	\$8.75	\$2,986.29	\$14.93	\$2,971.36	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
				\$3.21	\$0.00	\$0.00	\$0.00	\$0.00
					\$437,089.28	\$1,173.96	\$435,915.35	\$0.00