

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

| | | |
|--------------------------------|---|-------------------------|
| In the Matter of the Complaint |) | Docket No. GDC-443 |
| of John A. Fecht, Director of |) | |
| the Nebraska Public Service |) | |
| Commission Grain Warehouse |) | |
| Department, |) | |
| |) | |
| COMPLAINANT, |) | ORDER ASSESSING CIVIL |
| |) | PENALTIES |
| vs. |) | |
| |) | |
| Roberts Seed, Inc., Axtell, |) | |
| Nebraska, |) | |
| |) | |
| Respondent. |) | Entered: August 7, 2018 |

BY THE COMMISSION:

On April 21, 2017, Roberts Seed, Inc., (Roberts) applied for a license to operate as a Grain Dealer. However, Roberts failed to timely complete all steps to obtain such license. Grain Department Staff (Department) attempted to work with Roberts over the next several months to complete the process. Roberts either failed to communicate with the Department or provided incomplete information. On February 27, 2018, a Grain Department Examiner conducted a Soybean Checkoff audit at Roberts. As a result, the Department became concerned Roberts was operating as a Grain Dealer without a license. On March 16, 2018, the Department sent a letter to Roberts indicating they were not permitted to operate as a Grain Dealer without a license. The Department informed Roberts they must cease and desist any Grain Dealer operations and contact the Department regarding their pending Application. Roberts was given until April 27, 2018 to take action on the Application.¹

Roberts failed to respond to this letter. On May 1, 2018, the Commission issued an Order of Pending Dismissal for the Application filed by Roberts. Roberts was given until May 21, 2018. On May 2, 2018, Roberts provided a surety bond issued by Hudson Insurance Company in the amount of \$35,000. On May 4, 2018, Roberts notified the Department they were currently unable to meet the financial requirements for a Grain Dealer License. Respondent was completing the process of a Chapter 11 Bankruptcy. Roberts further notified the Department that they

¹ Commission Exhibit 2.

did have outstanding contracts. On May 10, 2018, Grain Department Examiners reviewed company records and determined Roberts had been operating as a Grain Dealer without a license.

On May 15, 2018, the Commission opened a Complaint against Roberts for operating without a license. The Commission also issued an Order to Cease and Desist all Grain Dealer operations. Roberts was served with the complaint on May 17, 2018.² Roberts had 20 days from the date of service to file an answer. No answer was received, therefore all allegations were accepted as true.³ Hearing was held in this matter on June 18, 2018.

EVIDENCE

Mr. Scott Micek testified first on behalf of the Commission. Mr. Micek is a Grain Warehouse Examiner within the Grain Department.⁴ Mr. Micek testified generally as to the process for Grain Exams. He also testified further that he participated in the Soybean Checkoff Audit at Roberts in February where it was discovered they were buying and selling grain.⁵ Mr. Micek further testified he and another examiner conducted the examination of records at Roberts in May. Mr. Micek identified sales slips for grain purchased by Roberts from Nebraska producers.⁶ Mr. Micek was also able to identify sales slips showing Roberts had then sold grain as well.⁷ Mr. Micek testified he delivered this information to Department Director John Fecht.⁸ On Cross Examination, Mr. Micek identified nine of the purchases of grain in Exhibit 13 where the purchase was specifically identified as seed.⁹

Mr. John Fecht, the Grain Department Director testified next. Mr. Fecht testified generally to his role as Director and experience with Applications for licenses. Mr. Fecht testified specifically about Roberts' Application. He noted typically, applications include the Application fee, a year-end financial statement prepared by a Certified Public Accountant to ensure the minimum net worth requirements are met, the types of grain to be purchased, the volume of business anticipated, a bond or

² Exhibit 7.

³ Neb. Admin R & Regs., Title 291, Ch. 1 §005.09.

⁴ Hrg. Trancr. 12:3-6.

⁵ *Id.* at 12:23-13:2

⁶ *Id.* at 13:18-14:6. See Also: Exhibit 13.

⁷ *Id.* at 14:11-17. See Also: Exhibit 14.

⁸ *Id.* at 15:5-13

⁹ *Id.* at 16:9-19:3

irrevocable letter of credit, a background check, and the contract with Warning to Seller Language.¹⁰

Mr. Fecht testified these elements were not present with the Roberts Application. The Application was received in April 2017, and the background check was completed in August of 2017. However, no additional steps were taken for more than 8 months.¹¹ Mr. Fecht testified he attempted to communicate with Roberts. Leisha Roberts indicated to him that she had contracted with Mike Main, a CPA, to complete the financial statement. However, no financial statement was ever produced.¹²

Mr. Fecht further testified the Grain Examiners conducted the Soybean Checkoff Audit as described above in February 2018. Based on that audit, Mr. Fecht contacted Roberts to determine whether they were operating without a license. Mr. Fecht indicated Leisha Roberts told him they were still trying to meet the financial requirements for the license and that they were having bankruptcy issues.¹³ The Department issued the letter described above. When no response was received, and no action was taken, the Order of Pending Dismissal was issued by the Commission. After this Order, Roberts informed Mr. Fecht about the existence of the bond.¹⁴ The bond was issued in November 2017. However, Roberts did not supply this to the Commission until May 2018. Mr. Fecht indicated the originals of such bonds are to be maintained at the Commission.¹⁵

Mr. Fecht testified regarding Exhibit 13. He identified that the purchases made by Roberts were from Nebraska Producers. Mr. Fecht indicated Nebraska law protects only Nebraska producers.¹⁶ The Exhibit contained several items which specifically referenced seed purchases. Mr. Fecht noted seed is an exempted commodity.¹⁷ In reviewing the records, there were 25 separate instances of Roberts purchasing Grain from Nebraska Producers, which was not seed, and required a license.¹⁸ Mr. Fecht also identified sales slips indicating Roberts sold grain it had purchased.¹⁹

¹⁰ *Id.* at 22:8-23:21

¹¹ *Id.* at 24:11-20.

¹² *Id.* at 25:25-26:13.

¹³ *Id.* at 27:16-28:12

¹⁴ *Id.* at 28:20-29:12

¹⁵ *Id.* at 30:1-9

¹⁶ *Id.* at 32:17-20.

¹⁷ *Id.* at 33:3-6.

¹⁸ *Id.* at 35:1-8. Exhibit 13.

¹⁹ *Id.* at 36:9-37:6. See Also: Exhibit 14

Mr. Fecht identified a Contract between Tim Cada and Roberts. The Contract does not contain the required Warning to Seller Language.²⁰

On Cross Examination, Mr. Fecht testified the Department had not received any complaints from farmers. Mr. Fecht further testified he had received the Application, background check, and Bond from Roberts at the time of the hearing.

Mr. Joe Roberts testified on behalf of Roberts Seed, Inc. Mr. Roberts is the President of Roberts.²¹ Roberts does not contest the allegations within the Complaint.²² Mr. Roberts acknowledged they had been buying and selling grain and apologized to the Commission.²³ Roberts does intend to reapply for a Grain Dealer license in the future.²⁴

Mr. Roberts testified the contract in Exhibit 15 was never fulfilled. It was intended to help Mr. Cada get insurance for his crops.²⁵ Mr. Roberts further testified the company does custom cleaning business outside of the regulated Grain Dealing business.²⁶ Mr. Roberts indicated the company does sell product that does not meet food grade is sold as feed.²⁷

On Examination by the Commissioners, Mr. Roberts testified about the Cada Contract for insurance purposes. The Contract was amended to reflect additional acres of soybeans. However, he stated he did not know if the changes described in the contract were actually made or if they were simply presented to the insurance company.²⁸ The Commissioners asked why he would create a Contract if he did not intend to purchase the soybeans. Mr. Roberts testified he was just trying to help the farmer out as it is difficult to get insurance.²⁹ Mr. Roberts also testified the Company does currently owe some Nebraska Producers for Grain, but he did not know how many.³⁰

²⁰ *Id.* at 38:15-39:9. See Also: Exhibit 15.

²¹ *Id.* at 48:7

²² *Id.* at 48:8-11

²³ *Id.* at 49:13-16

²⁴ *Id.* at 49:17-22

²⁵ *Id.* at 51:1-12.

²⁶ *Id.* at 52:7-15

²⁷ *Id.* at 54:19-55:1

²⁸ *Id.* at 60:24-61:24

²⁹ *Id.* at 59:21-60:23; 61:8-15

³⁰ *Id.* at 64:8-14

Finally, Leisha Roberts testified. She testified the Contract in Exhibit 15 was not simply for Insurance purposes. She indicated Roberts had intended to buy the soybeans, but they were unable to get their license so they did not purchase them.³¹ However, the Contract was in 2017. Roberts did make grain purchases after this Contract.³²

OPINION AND FINDINGS

Roberts previously held a Grain Dealer's License from 1997-2003.³³ They were familiar with the requirements of a Nebraska Grain Dealer. Roberts applied in April of 2017 and failed to take necessary steps to complete the process to obtain a new license. Pursuant to the Grain Dealer Act, Applicants are required to complete the Commission Approved Application form, pay the \$100 licensing fee, complete a background check, file an independently reviewed or audited year-end financial statement, and provide a copy of a purchase contract with the required Warning to Seller Language.³⁴

Roberts failed to comply with these requirements. Department staff attempted to work with Roberts to bring them into compliance. Roberts operated as a Grain Dealer without a license for many months. Exhibits 13 and 14 outline 25 separate incidents of Roberts buying (from Nebraska Producers) and selling Grain without a license. Exhibit 15 provides an example of the Roberts Sales Contract which fails to include the required Warning to Seller Language. Although Roberts did argue they had complied with several elements of the Application process, the one that was not completed was the financial statement. The ability to meet financial requirements is essential to the Grain Dealer Process. It provides the most meaningful protection to producers as it is the best guarantee that the Dealer will be able to fulfill its obligations. Roberts was familiar with this requirement and chose to operate without complying. Given the Company's current bankruptcy status, there are very real concerns about the company's ability to meet its obligations. Mr. Roberts did testify that there are Nebraska Producers the company has not paid.

While the Commission does appreciate that no farmers have yet come forward indicating they have been directly harmed,

³¹ *Id.* at 66:12-18

³² *Id.* at 67:21-68:7

³³ *Id.* at 7:1-3.

³⁴ Neb. Rev. Stat. 75-903. See Also Neb. Admin Code 291 ch. 8 §003.02-003.04.

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Roberts still violated Nebraska Statutes and Commission Rules. Further where there are Producers who have not been compensated, it is not yet clear whether Roberts will be able to meet its obligations and protect the interests of the farmers.

The Commission is permitted to levy civil penalties for such violations pursuant to Nebraska Revised Statutes §§75-156, 75-910, and 291 Neb. Admin Code Ch. 8 §003.09. As such the Commission finds that Roberts Seed, Inc. of Axtell, NE committed 25 such violations. The Commission feels that a penalty of \$400 per violation is appropriate. The total penalty assessed by the Commission against Roberts Seed, Inc., is \$10,000.

O R D E R


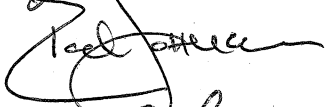

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Roberts Seed, Inc., of Axtell, Nebraska, must pay civil penalties in the amount of \$10,000.00.

IT IS FURTHER ORDERED that the Roberts Seed, Inc., must not engage in any Grain Dealer Activities without properly obtaining a Grain Dealer License.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 7th day of August 2018.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



Chair

ATTEST:



Deputy Director

//s//Frank E. Landis
//s//Mary Ridder