

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of John A. Fecht,)	Docket No. GWC-441/
Director Warehouse Department)	GW-2136/GD-2136
Nebraska Public Service)	
Commission,)	
)	
Complainant,)	
)	HEARING OFFICER ORDER
v.)	GRANTING MOTIONS TO QUASH
)	
Pierce Elevator, Inc., Pierce,)	
Nebraska,)	
)	
Defendant.)	Entered: July 7, 2014

BY THE HEARING OFFICER:

On March 5, 2014, John A. Fecht, Director, Warehouse Department ("Department"), filed a verified petition seeking an order to close the warehouse of Pierce Elevator, Inc., Pierce, Nebraska ("Pierce" or "Defendant") and to take title to all grain in the warehouse. Defendant voluntarily surrendered its grain dealer and grain warehouse licenses on March 4, 2014.

On March 5, 2014, the Commission entered an order closing Pierce's warehouse at all locations and taking title to all grain in storage in trust for all valid owners, depositors or storers of grain.

On July 1, 2014, Austin McKillip, attorney for thirty claimants in the above-captioned docket, requested that the Commission issue subpoenas to certain witnesses to compel their attendance at the hearing set for July 8, 2014.

On July 3, 2014, Motions to Quash (Motions) the subpoenas to Michael Pate and Dennis Oschner were filed with the Commission. The Motions asserted that both Mr. Oschner and Mr. Pate reside more than one hundred miles from the hearing location and per Neb. Rev. Stat. § 25-1227(1) cannot be compelled to attend.

A timely response was filed by attorneys representing the thirty claimants stating that § 25-1227(1) does not apply and that the witnesses' testimony is necessary to support their claimants' position that they were defrauded.

The Hearing Officer finds that the issuance of subpoenas is within the Commission's discretion. Due to the distance from the hearing and the relatively short notice to the witnesses,

GWC-441/GW-2146/GD-2146

Page 2

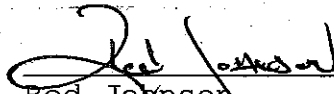
the Hearing Officer finds that the Motions should be granted and the subpoenas at issue quashed. Due to the unavailability of the witnesses at issue, the depositions can be offered in lieu of their live testimony to the extent their testimony is relevant to the claims. The Motions also demanded that costs be awarded. However, the Commission does not have the statutory authority to award costs.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer Motions to Quash are granted as set forth herein and that the request for an award of costs is denied.

MADE AND ENTERED in Lincoln, Nebraska, on this 7th day of July, 2014.

BY:



Rod Johnson
HEARING OFFICER