

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

| | | |
|---------------------------------|---|----------------------------|
| In the Matter of John A. Fecht, |) | Docket No. GWC - 441/ |
| Director Warehouse Department |) | GW-2136/ |
| Nebraska Public Service |) | GD-2136 |
| Commission, |) | |
| |) | |
| Complainant, |) | |
| |) | ORDER REGARDING LATE-FILED |
| v. |) | EXHIBIT |
| |) | |
| Pierce Elevator, Inc., Pierce, |) | |
| Nebraska, |) | |
| |) | |
| Defendant. |) | Entered: July 22, 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.

A hearing on this matter was held on July 8, 2014.

On July 14, 2014, Citizens State Bank ("Bank") filed a Motion for leave to file a late-filed exhibit consisting of a letter dated July 11, 2104, and a Statement of Clarification by Director John Fecht with one attachment labeled Attachment A. The Exhibit for which the Bank seeks permission to late-file herein is attached to this order and marked as Exhibit 291.

Any Party with objections to the proposed late-filed exhibit attached hereto shall file such objections in writing no later than **Thursday, July 31, 2014**. If no objections are received, the exhibit offered by the Bank will be received into the record.

GWC-441/GW-2136/GD-2136

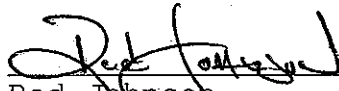
Page 2

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that the Motion by Citizens State Bank for leave to file a late-filed exhibit, attached hereto and labeled Exhibit 291, shall be granted if no written objections are received from any party by **Thursday, July 31, 2014.**

MADE AND ENTERED in Lincoln, Nebraska, on this 22nd day of July, 2014.

BY:



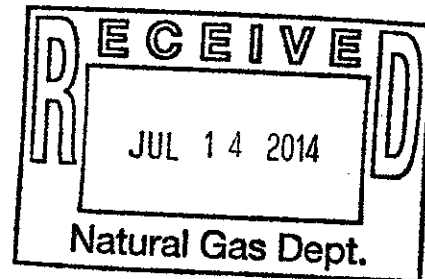
Rod Johnson
HEARING OFFICER

July 11, 2014

ERIN R. ROBAK
ATTORNEY
erinrobak@mgwl.com

VIA E-MAIL AND REGULAR MAIL

Nichole Mulcahy
Legal Counsel
NEBRASKA PUBLIC SERVICE COMMISSION
300 The Atrium
1200 N Street
Lincoln, NE 68508



RE: In the Matter of John A. Fecht, Director Warehouse Department Nebraska Public Service Commission v. Pierce Elevator, Inc.; Docket No. GWC-441/GW-2136/GD-2136
Our File No.: 17483-0013


Dear Nichole:

The purpose of this letter is to request the issuance of a statement of clarification by Mr. Fecht concerning certain statements made by him at the hearing held on July 8, 2014 in the above-referenced matter regarding Citizens State Bank (the "Bank").

While I currently do not have a copy of the transcript from Tuesday's hearing, and, as a result are paraphrasing Mr. Fecht's statements, the statements by Mr. Fecht needing clarification are as follows: The Bank hindered the Commission's unloading and sale of Pierce Elevator's grain by taking the augers, tractors and skid loaders that Mr. Bargstadt had given the Commission the permission to use. As a result of the Bank's actions, the Commission had to rent additional equipment causing additional costs to be incurred, which will directly affect the amount of money paid to the claimants. The Bank owes \$1,000.00 for the fuel the Commission paid to put in the equipment.

The foregoing statements, which were made at the close of Mr. Fecht's testimony, were entirely irrelevant to the Commission's determination of claims. These statements, made in the presence of over 150 area farmers and many members of the media, have portrayed the Bank in a false light and such statements, unless clarified, could severely damage the Bank's reputation in the community.

It is unfortunate that Mr. Fecht used the claims' hearing as a forum to express his apparent frustration with the Bank knowing that the Bank, a non-party to the proceeding, was unable to defend or rehabilitate itself. Accordingly, the Bank is requesting that Mr. Fecht execute the enclosed statement of clarification, which should be sent by the Commission to each claimant and their attorney. The Commission should further obtain the consent of all counsel to



Nichole Mulcahy
Legal Counsel
NEBRASKA PUBLIC SERVICE COMMISSION
July 11, 2014
Page 2

file the statement of clarification as a late-filed exhibit making it a part of the permanent record in this matter. Finally, the Commission should agree that the Bank is free to disseminate the statement of clarification as it deems necessary to others who were present at the July 8th hearing or to persons to whom the statements of Mr. Fecht have been repeated.

I look forward to working with you to rectify this matter.

Sincerely,



Erin R. Robak
FOR THE FIRM

Enclosure

cc: Steven Ausdemore

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF JOHN A. FECHT,
Director Warehouse Department Nebraska
Public Service Commission,

Complainant,

vs.

PIERCE ELEVATOR, INC.,
Pierce, Nebraska,

Defendant.

Docket No. GWC - 441/GW 0-2136/ GD 2136

**STATEMENT OF CLARIFICATION
OF JOHN FECHT**

STATE OF NEBRASKA)
) ss
COUNTY OF LANCASTER)

I, JOHN FECHT, being first duly sworn on oath, depose and state as follows:

1. I am the Director of the Warehouse Department of the Nebraska Public Service Commission (the "Commission").

2. The purpose of this Statement is to clarify certain statements made by me during the hearing in this matter held on July 8, 2014 regarding Citizens State Bank (the "Bank").

3. Brian Bargstadt, President of Pierce Elevator, Inc. ("PEI"), gave the Commission permission to use certain equipment, including augers, tractors and skid loaders ("Equipment"), to unload and haul the grain located at PEI's locations in Pierce, Randolph and Foster. Mr. Bargstadt did not inform me, or to my knowledge, anyone else at the Commission of the Bank's lien on the Equipment.

4. On or about May 27, 2014, I learned that the Bank had picked up various items of Equipment located at Randolph and Foster. When a representative for the Bank came to Pierce to pick up Equipment located there, at the request of the Commission, a tractor and auger were left at the Pierce location. On this same day, myself and Mike Bartels contacted Nadine Hagedorn, Community President of the Bank. It was at this time that I learned of the Bank's lien on the Equipment. I also learned that the Bank had obtained a court order entitling it to possession of the Equipment. Later that day, copies of the court orders entitling the Bank to

immediate possession of the Equipment were provided to the Commission. A true and copy of the orders provided by the Bank to the Commission is attached hereto as Exhibit "A".

5. At no time prior to May 27, 2014, had I, or to my knowledge, anyone else at the Commission, told the Bank that the Commission was utilizing the Equipment to unload and haul the grain from PEI's elevators.

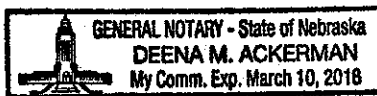
6. The Commission requested that the Bank agree to leave the tractor and auger at the Pierce location until Thursday, May 29, 2014, to allow the Commission to finish unloading the grain there. The Bank was agreeable to allowing the Commission to use the tractor and auger until May 29th provided that the Commission agreed to maintain the equipment in its current condition and agreed to hold the Bank harmless and indemnify the Bank for any claims or liabilities resulting from the Commission's use of the tractor and auger. The Commission advised the Bank that it could agree to keep the equipment in its current condition, but could not agree to a hold harmless or indemnity provision.

7. A representative of the Bank picked up the tractor and auger located in Pierce on Thursday, May 29, 2014.

8. At no time have I, or to my knowledge, anyone else at the Commission, made demand upon the Bank for reimbursement of the costs for the fuel in the Equipment at the time the Bank took possession of the same.


JOHN FECHT

SUBSCRIBED and sworn to before me this 21 day of July, 2014.




Notary Public

IN THE DISTRICT COURT OF PIERCE COUNTY, NEBRASKA

CITIZENS STATE BANK,
a Nebraska banking corporation,

Plaintiff,

vs.

PIERCE ELEVATOR, INC.,
a Nebraska corporation, and
BRIAN J. BARGSTADT,

Defendants.

Case No. CI 14-0000024

**ORDER FOR
TEMPORARY POSSESSION**

OFFICE OF THE CLERK OF DISTRICT COURT
FILED

MAY 13 2014

10:20A
VICKIE PRINCE
Clerk of District Court, Pierce County, NE

NOW, on May 13, 2014, this matter having come on for hearing on Plaintiff's Application for immediate possession of the personal property described in its Petition in Replevin, Plaintiff having appeared by its attorney, Steven J. Woolley, and the Defendants, Pierce Elevator, Inc. and Brian J. Bargstadt, [having appeared not nor anyone for them] ~~[having appeared by their attorney,~~ _____], and the Court, upon hearing the evidence, viewing the file, and being fully advised in the premises, makes the following findings:

1. This Court has jurisdiction both of the parties and the subject matter hereto.
2. Plaintiff has raised a bona fide issue as to whether it is the owner of the property that is the subject matter of this proceeding or whether it has a special ownership interest therein.
3. It appears sufficiently probable to the Court that the Plaintiff will prevail on the merits of this case.
4. There is a bona fide issue as to whether the property is wrongfully detained by the Defendants and that the Plaintiff is entitled to immediate delivery of the property.
5. Because of the above and foregoing, Plaintiff is entitled to the immediate possession of the personal property itemized and described on the attached Exhibit "A" which is a made a part hereof by this reference (the "Property").



IT IS, THEREFORE, ORDERED that the Clerk of this Court shall immediately issue one or more Orders for Delivery ordering the Sheriff of each and every county in which the Property, or any part thereof, is found, to immediately deliver possession of such Property to the Plaintiff and to deliver such Order for Delivery to each said sheriffs to be served and returned according to law.

IT IS FURTHER ORDERED that the sheriff of any such county, upon receipt of the Order for Delivery from the Clerk's Office, shall immediately serve said Writ, shall ascertain by the oath of two or more responsible persons the value of the Property subject to the Writ, shall make his return of service, and upon the filing by Plaintiff of its undertaking to the Defendants as required by law, shall immediately deliver all of said Property to the Plaintiff.

BY THE COURT:

Date: May 13, 2014


District Court Judge

PREPARED AND SUBMITTED BY:

Steven J. Woolley, #15222
McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O.
11404 West Dodge Road, Suite 500
Omaha, NE 68154-2584
(402) 492-9200
(402) 492-9222 Facsimile
steve woolley@mgwl.com
ATTORNEYS FOR PLAINTIFF

EXHIBIT "A"

Machinery & Equipment

Auger 10-13-98
Auger 11-18-98
Auger 12-01-98
Auger 8-23-01
Auger 9-24-03
Auger 8-29-06 - 10" x 85'
Auger 6-22-07 - 10" x 85'
Auger Sweep 10-02-07-24'
Auger 5-29-08 - 10" x 30'
Auger 7-23-08 - 12" x 30'
Auger 6-04-09 - 13" x 92'
Auger 11-02-09 - 12" x 92'
Auger 11-10-12 -13" x 92'
Auger 10-19-13 -12" x 92' Lateral
Hopper Assembly
Grain Vac 8-08-08
Grain Vac 5-02-11
Grain Probe 12-02-97
Grain Probe 7-09-10
Grain dryer (traded in)
Grain Dryer 3-30-09
Moister tester 8-28-08
Moister tester 12-09-08
Weeder 5-22-08
Equipment 11-04-09
Engine 4-28-10 - In truck
Grinder Mixer 5-11-05
Feeder 4-21-06
Gates 11-28-11
Waterer 8-17-11
Apache feeder 1-31-12
Hay mover 2-28-12
Creep feeder 6-29-12
Panels 6 8' 160 bu 6-05-12
Apache feeder 6-29-12
Computer 10-19-02
Summit Software 12-07-11
Fork lift 9-23-08
Fork lift 3-16-09
08 Skid Steer 1-22-10
6640 Skid Steer 6-09-11
6640 Skid Steer 8-23-11
Telehandler 10-03-11
Scale 9-09-98
Scale 9-30-99
Seed tender 5-02-07
Scale 6-13-07
Seed tender 6-16-09
IHC 856 Tractor 8-13-02
JD 4020 Tractor 8-16-07 - w loader
JD 3020 Tractor 10-03-07
JD 4020 Tractor 6-20-08 - w loader
JD 3020 Tractor 10-13-08
JD 4020 Tractor 8-19-09
JD 4320 Tractor 10-01-10
Skidloader (2)
JD 3010 Tractor

Misc. scale equipment including electronic scale heads

All equipment and machinery at both Pierce and Randolph, NE elevators

IN THE DISTRICT COURT OF PIERCE COUNTY, NEBRASKA

CITIZENS STATE BANK,
a Nebraska banking corporation,

Plaintiff,

vs.

PIERCE ELEVATOR, INC.,
a Nebraska corporation, and
BRIAN J. BARGSTADT,

Defendants.

Case No. CI 14-0000024

OFFICE OF THE CLERK OF DISTRICT COURT
FILED

ORDER FOR
DELIVERY

MAY 13 2014

3:20 P.M.
VICKIE PRINCE
Clerk of District Court, Pierce County, NE

TO THE SHERIFF OF CEDAR COUNTY, NEBRASKA:

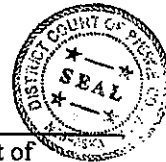
Pursuant to the Order for Temporary Possession entered by this Court within this proceeding on May 13, 2014, you are hereby commanded and ordered to take possession of the following described property:

See Exhibit "A" which is made a part hereof by this reference (the "Property") from the Defendants herein, Pierce Elevator, Inc. and/or Brian J. Bargstadt ("Defendants") wherever such Property may be found in Cedar County, Nebraska and deliver it to the Plaintiff, Citizens State Bank, and to make return of this Order on or before June 2, 2014.

To complete your execution of this Order you may either deliver a copy of this Order personally upon Brian J. Bargstadt, once in his individual capacity and a second time in his capacity as President of Defendant, Pierce Elevator, Inc., or by leaving two copies of the same at Defendant Brian J. Bargstadt's residence at 403 W. Randall Street, Randolph, Nebraska 68771.

Date: May 13, 2014

Vickie Prince
Vickie Prince, Clerk of the District Court of
Pierce County, Nebraska



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PREPARED AND SUBMITTED BY:

Steven J. Woolley, #15222
McGill, Gotsdiner, Workman & Lepp, P.C., L.L.O.
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Omaha, NE 68154-2584
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(402) 492-9222 Facsimile
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6640 Skid Steer 8-23-11
Telehandler 10-03-11
Scale 9-09-98
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JD 4020 Tractor 8-16-07 - w loader
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Defendants.

Case No. CI 14-0000024

OFFICE OF THE CLERK OF DISTRICT COURT
FILED

ORDER FOR
DELIVERY

MAY 13 2014

Vickie Prince
VICKIE PRINCE
Clerk of District Court, Pierce County, NE

TO THE SHERIFF OF PIERCE COUNTY, NEBRASKA:

Pursuant to the Order for Temporary Possession entered by this Court within this proceeding on May 13, 2014, you are hereby commanded and ordered to take possession of the following described property:

See Exhibit "A" which is made a part hereof by this reference (the "Property") from the Defendants herein, Pierce Elevator, Inc. and/or Brian J. Bargstadt ("Defendants") wherever such Property may be found in Pierce County, Nebraska and deliver it to the Plaintiff, Citizens State Bank, and to make return of this Order on or before June 2, 2014.

To complete your execution of this Order you may either deliver a copy of this Order personally upon Brian J. Bargstadt, once in his individual capacity and a second time in his capacity as President of Defendant, Pierce Elevator, Inc., or by leaving two copies of the same at Defendants' usual place of business of 225 East Nebraska Street, Pierce, Nebraska 68767.

Date: May 13, 2014

Vickie Prince
Vickie Prince, Clerk of the District Court of
Pierce County, Nebraska



#584884_1.DOCX



PREPARED AND SUBMITTED BY:

Steven J. Woolley, #15222
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