

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of John A. Fecht,)	Docket No. GWC-441/GW-2136/
Director Warehouse Department)	GD-2136
Nebraska Public Service)	
Commission,)	
)	
Complainant,)	
)	ORDER ADOPTING MANDATE AND
v.)	DIRECTING CALL ON WAREHOUSE
)	BOND
Pierce Elevator, Inc., Pierce,)	
Nebraska,)	
)	
Defendant.)	Entered: October 14, 2015

BY THE COMMISSION:

On March 5, 2014, upon the filing of a verified petition by John A. Fecht, the Director of the Grain Warehouse Department ("Department"), the Nebraska Public Service Commission ("Commission") entered an order closing Pierce Elevator Inc.'s ("Pierce") warehouse locations. The order further took title to all grain in storage at Pierce's locations in trust for distribution to all valid owners, depositors or storers of grain pursuant to the Grain Warehouse Act¹. The Commission also took evidence to determine valid claims against the \$300,000.00 dealer bond pursuant to the Grain Dealer Act².

After the closure of the warehouse, the Department examined the records of Pierce and compiled possible claims based upon the examination. A hearing was held on July 8, 2014, at the Pierce County Fairgrounds in Pierce, Nebraska.

On September 3, 2014, the Commission issued an order determining claims ("Claims Order"). The Commission approved more than \$4.6 million in warehouse claims. There were sufficient proceeds from the sale of the grain stored in Pierce to allow for 100% recovery by the approved warehouse claimants. The Commission also approved more than \$3.3 million in dealer claims. Approved dealer claimants received a pro rata share of the \$300,000 dealer claim of \$.09 on the dollar.

The Commission's Claims Order denied the dealer claim of James and Diane Herian, claim number 58 and the warehouse claim of Curt Raabe, claim number 116.

¹ Neb. Rev. Stat. §§ 88-525 to 88-552 (2008 Cum. Supp.)("Warehouse Act").

² Neb. Rev. Stat. §§ 75-901 to 75-910 (2006 Cum. Supp.)("Dealer Act").

The Commission's order was appealed to the Nebraska Supreme Court by six claimants on differing theories, including the Herians and Mr. Raabe. Due to the appeal, no claims were paid and the proceeds from the sale of the grain were kept in an interest bearing account. On September 11, 2015, the Court issued its opinion in the Pierce appeal, in In re Claims Against Pierce Elevator, 291 Neb. 798 (2015). The court reversed the Commission decision and approved warehouse claims for both Mr. Raabe and James and Diane Herian.

The Court issued the mandate on the proceeding and sent the proceeding back to the Commission with its opinion and findings.

O P I N I O N S A N D F I N D I N G S

The Commission therefore finds, pursuant to the findings of the Nebraska Supreme Court, that Claim no. 58 and Claim no. 116 are hereby approved warehouse claims and James and Diane Herian and Curt Raabe are valid owners, depositors, or storers of grain and are entitled to share in the grain proceeds and warehouse security posted by Pierce.

A grain warehouse bond in the amount of \$580,000 payable to the Commission, "for the benefit of all depositors, storers and/or owners and qualified check holders"³ is available. Proceeds from the sale of all grain stored in Pierce totaled \$4,734,056.72. Based upon the original findings of the Commission in the Claims Order, the grain proceeds were in excess of the amount necessary to satisfy claims and pay for certain allowable expenses of the Commission. Therefore, in the Claims Order, the Commission found that at that time, no call on the warehouse bond should be made. However, the Commission further held that not making such a call on the warehouse bond in the Claims Order did not constitute a waiver of the rights of the Commission under the warehouse bond should it be determined that a call is necessary.

With the approval of warehouse claims for the Herians and Mr. Raabe, the proceeds from the sale of the grain are insufficient to satisfy all the approved warehouse claims. Therefore, the Commission finds that a call on the Warehouse Bond in the amount of \$172,166.02 shall be made.

³ Neb. Admin. Code, Title 291, Ch. 8 § 002.05B.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the claim of James and Diane Herian, claim no. 58, and Curt Raabe, claim no. 116, against the grain proceeds shall be, and are hereby, approved as set forth above and in the order of the Nebraska Supreme Court in, In re Claims Against Pierce Elevator, 291 Neb. 798 (2015), which is attached hereto and incorporated by reference.

IT IS FURTHER ORDERED that the Commission shall call \$172,166.02 of the warehouse bond in order to satisfy the approved warehouse claims as set forth in the Commission's September 3, 2014 order and herein.

IT IS FURTHER ORDERED that the Commission shall make payment after receipt of the bond proceeds, calculation of the final interest and completion of a lien search.

MADE AND ENTERED at Lincoln, Nebraska, this 14th day of October, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram

Crystal Lwade

Red Johnson

//s//Frank E. Landis

//s//Gerald L. Vap

Chairman

Gerald L. Vap

ATTEST:

Jeffrey L. Puley

Executive Director