

At its regularly scheduled meeting of May 9, 2023, the Commission considered Staff's Motion to Reopen the Record and Allow Additional Testimony, Banghart's Application for a Class A Grain Buyer License, and a Post-Hearing Procedural Schedule. Having thoroughly reviewed the filings in the docket and after making further inquiry of the parties, the Commission voted 2-1 to grant Staff's Motion to Reopen the Record and Allow Additional Testimony, Commissioner Hanson dissenting. That Commission reopened the record and on this date, heard additional testimony and evidence presented by both parties, with the opportunity for cross-examination of all witnesses. Banghart and Staff also orally agreed to a procedural schedule in which Staff's post-hearing brief be filed 30 days following the availability of the final transcript, Banghart's brief be filed 30 days later, and Staff's final brief due 15 days after Banghart files its brief.

The Commission, having considered this matter, all records and documents on file herein, the applicable law and the arguments of counsel now makes and finds the following Findings of Fact and Conclusions of Law and Order regarding whether there is good cause to deny Banghart's Application for a Class A Grain Buyer license:

FINDINGS OF FACT

1. On April 4, 2023, Banghart submitted a complete Application for a Class A Grain Buyer License (Application) to the Commission's Grain Warehouse Division. Exhibit 23
2. On April 5, 2023, Mr. Cody Chambliss, manager of the grain warehouse program, issued a formal letter denying Banghart's Application for financial reasons and for good cause and advising Banghart of its right to request a Commission hearing on the denial. Exhibit G
3. On April 27, 2023, the Commission held an evidentiary hearing on the Application and Staff's initial Complaint against Banghart. See *Order for and Notice of Evidentiary Hearing on Less than 10 Days' Notice*. Staff and Banghart presented witness testimony and documentary evidence to the Commission.
4. The Evidentiary Hearing lasted approximately 10 hours.
5. On May 8, 2023, Staff filed a Motion to Reopen the Record and Allow Additional Testimony, an Affidavit of Cody Chambliss, and accompanying exhibits. Staff requested the Commission hear the Motion to Reopen the Record and Allow Additional Testimony at the regularly scheduled May 9, 2023, Commission Meeting, as this matter was already included on the agenda.
6. On May 9, 2023, pursuant to Staff's Motion, Staff and Banghart presented additional witness testimony and documentary evidence to the Commission.
7. Specifically, Staff showed it obtained relevant and newly discovered information that was not available to Staff prior to the evidentiary hearing.
8. Staff demonstrated that Banghart was aware of this information and did not adequately explain or provide this information to Staff. Further, Banghart made misrepresentations and misclassified this information so Staff could not reasonably understand this information prior to the evidentiary hearing.

9. Staff presented the new information as a lack of honesty, integrity, and willingness to comply with state laws. Staff showed that Banghart's candor surrounding the transaction indicated a lack of trustworthiness when viewed in light of the prior memorandum of adjustment and a cease-and-desist request both provided to Banghart on January 12, 2023.
10. This newly discovered information shows Banghart made misrepresentations to the Commission during the evidentiary hearing. Banghart led the Commission to believe that it was complying and would continue to comply with Staff's request to cease and desist operation as a grain buyer in South Dakota pending resolution of the Complaint.
11. On May 9, 2023, after offering Banghart additional time to prepare for reopening the record, finding good cause to reopen the record, the Commission granted Staff's Motion to Reopen the Record and Allow Additional Testimony.
12. The Commission found that the evidence from the evidentiary hearing, the new evidence presented after the evidentiary hearing, and the totality of the record since the inspection of January 9, 2023, and Complaint filed on January 30, 2023, shows Banghart made multiple misrepresentations to Staff, struggled to timely turn over adequate and up-to-date financial information of the kind and standard regularly obtained in the course of grain buyer regulation, and required dramatically more Staff support than the average grain buyer.
13. Throughout the record, Jan, owner of Banghart, provided Staff with financial information about Banghart that was drastically different than what was provided in the CPA reviewed financial report. These filings by Jan were numerous and in multiple formats and submissions.
14. Banghart admitted to violations of state law. In a response to a data request by Staff, Banghart admitted they did not have copies of each contract entered into by Banghart as required by state law. Exhibit G
15. At the evidentiary hearing Mr. Jeremy Frost, independent contractor for Banghart, testified to a willingness to continue violating state law if it is in the best interests of his grain seller clients. Mr. Frost expressed a belief that this mentality was acceptable due to Jan's ultimate oversight and control over his actions while working for Banghart.
16. Mr. Frost and Mr. Wade Hardes, independent contractor for Banghart, testified they work virtually unsupervised, with full discretion, and Jan exercises limited to no control over their arbitrage dealings.
17. Additionally, the evidence showed Banghart has exhibited a pattern of non-compliance with state rules and law, as well as non-compliance in other jurisdictions. Exhibit G
18. The Commission finds these actions by Banghart pose a risk to grain sellers in this state.
19. The Commission finds these actions by Banghart are good cause to deny Banghart's Application for a Class A grain buyer license.

From the foregoing Findings of Fact, the Commission now makes the following:

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-45 and ARSD Chapters 20:10:01 and 20:10:12.
2. The Commission has jurisdiction under ARSD 20:10:01:27.01 to reopen the record at any time after a matter is taken under advisement and before the Commission issues a decision for good cause shown by a party to the proceeding.
3. The Motion to Reopen the Record and Allow Additional Testimony established good cause under ARSD 20:10:01:27.01.
4. The Commission concludes granting the Motion to Reopen the Record and Allow Additional Testimony will not prejudice the rights of Banghart.
5. SDCL 49-45-7 allows the Commission to deny a grain buyer license for good cause shown after notice and an opportunity for hearing.
6. Good cause to deny Banghart's application for a Class A grain buyer license has been shown.
7. The Commission grants Staff's Motion to Reopen the Record and Allow Additional Testimony.
8. The Commission finds there is good cause to deny Banghart's Application for a Class A grain buyer license under SDCL 49-45-7.
9. In the event any Finding of Fact above should properly be a Conclusion of Law or a Conclusion of Law should properly be a Finding of Fact, each shall be treated as such irrespective of its improper classification.

Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore

ORDERED, that the Motion to Reopen the Record to Allow Additional Testimony is hereby granted. (Commissioner Hanson dissenting.) It is further

ORDERED, that there is good cause for Banghart's Application for a Class A Grain Buyer License to be denied. It is further

ORDERED, that the parties shall submit post-hearing briefs for Staff's Complaint portion of this matter according to the following schedule: Staff's post-hearing brief be filed 30 days following the availability of the final transcript, Banghart's brief be filed 30 days later, and Staff's final brief due 15 days after Banghart files its brief.

Dated at Pierre, South Dakota, this 23rd day of May 2023.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.

By: Adam DeHueck

Date: 5/23/23

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Kristie Fiegen
KRISTIE FIEGEN, Chairperson

Gary Hanson
GARY HANSON, Commissioner
Dissenting in part

Chris Nelson
CHRIS NELSON, Commissioner