

STATE OF SOUTH DAKOTA)
):
COUNTY OF McCOOK)

IN CIRCUIT COURT

FIRST JUDICIAL CIRCUIT

IN THE MATTER OF GRAIN)
DEALER'S AND GRAIN)
WAREHOUSEMAN'S BONDS)
OF JEFF MULDER D/B/A)
FREEMAN FERTILIZER)
CO., INC. D/B/A MC COOK)
FEED & FERTILIZER AND)
GRAIN INVENTORY)

CIV. 01-

PETITION TO APPOINT
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
AS RECEIVER

Comes now the South Dakota Public Utilities Commission (Commission), an administrative agency of the State of South Dakota, requesting the above Court to appoint it as receiver of Jeff Mulder d/b/a Freeman Fertilizer Co., Inc. d/b/a McCook Feed & Fertilizer, pursuant to SDCL 49-45-16 and 49-43-5.6 and SDCL Chapter 21-21, to take possession of:

The cash proceeds of the grain dealer's bonds and the grain warehouseman's bonds, one bond numbered S16 7010, commencing July 1, 2000, and ending June 30, 2001, and a second bond commencing July 1, 1999, and ending June 30, 2000, with Employers Mutual Casualty Company, PO Box 712, Des Moines, IA 50303-9987, being the surety, and all grain inventory currently located at the Canistota facility.

The purpose of this Receivership will be to determine the merits of claims, subject to the final approval of this Court, against the above stated inventory and against the bonds that have been executed in accordance with applicable law.

In support of its Petition, the Commission states:

1. Jeff Mulder became a licensed grain dealer and warehouseman in the State of South Dakota in October, 1992. Mr. Mulder has a grain warehouse facility in Canistota, South Dakota. A copy of his most recent licenses are attached and incorporated by reference as Exhibit A.
2. Pursuant to SDCL 49-43-5.3 and SDCL 49-45-9, respectively, Mr. Mulder furnished a \$25,000 bond for his license as a grain warehouseman and a \$50,000 bond for his license as a grain dealer, effective for the period of July 1, 2000, through June 30, 2001. A copy of that bond is attached and incorporated by reference as Exhibit B.
3. Pursuant to SDCL 49-43-5.3 and SDCL 49-45-9, respectively, Mr. Mulder furnished a \$40,000 bond for his license as a grain warehouseman and a \$50,000 bond for his license as a grain dealer, effective for the period of July 1, 1999, through June 30, 2000. A copy of that bond is attached and incorporated by reference as Exhibit C.
4. On February 8, 2001, Bob Knadle, the director of the transportation/warehouse division of the Commission, received a complaint that checks issued by Mr. Mulder had been returned from his bank for non-sufficient funds. Subsequent to that complaint, Mr. Knadle contacted Mr. Mulder regarding those returned checks. On February 9, 2001, Mr. Knadle sent a letter to Mr.

Mulder confirming his conversation with Mr. Mulder and Mr. Mulder's position that he was unable to honor the payment of certain checks and that he would not buy or sell any grain. A copy of the letter is attached and incorporated by reference as Exhibit D.

5. On February 13, 2001, Mr. Mulder entered into a stipulated agreement with the Commission stipulating, inter alia, to the fact that Freeman Fertilizer Co., d/b/a McCook Feed & Fertilizer, was insolvent, agreeing to surrender his licenses, to not engage in any purchases or sales of grain, and permitting the Commission to take immediate possession of his facilities. A copy of the Stipulation is attached and incorporated by reference as Exhibit E.
6. On February 13, 2001, pursuant to SDCL 49-45-18 and 49-43-5.8, the Commission took possession of the facilities by securing padlocks to ensure that no grain would be deposited or removed and began an immediate audit of Mr. Mulder's books to verify the names and addresses of all outstanding warehouse receipt holders and scale ticket holders, and began a measurement of the grain.
7. On February 12, 2001, and March 2, 2001, pursuant to SDCL 49-45-18 and 49-43-5.8, notice was sent to the surety of the warehouseman's and grain dealer's bonds. Copies of the notices are attached and incorporated by reference as Exhibits F and G.
8. As of February 22, 2001 the Canistota Facility was sold by Mr. Mulder to Ray and Ralph Marquadt.
9. Pursuant to SDCL 49-43-5.6 and 49-45-16 the Commission now petitions this Court to appoint the Commission as a receiver of Jeff Mulder d/b/a Freeman Fertilizer Co., Inc. d/b/a McCook Feed & Fertilizer.
10. A receivership created by order of this Court would be for the sole and limited purpose of determining the claims against the grain dealer's bonds, the warehouseman's bonds, and the grain inventory as described above. Any funds forwarded to the Commission would be deposited in an interest bearing account in a Pierre, South Dakota FDIC insured bank, all pursuant to the Court order and SDCL 21-21-10.
11. Upon being appointed receiver of the bond proceeds and grain inventory, the Commission will place notices in the Canistota Clipper, the Freeman Courier, and the Sioux Falls Argus Leader notifying potential claimants in this matter of the right to file a claim with the Commission.
12. The Commission, upon notice to known and potential claimants, will hold a hearing, at a time and place yet to be determined, for claimants to present evidence as to the merits of their claims under the bonds and to the grain inventory.
13. In accordance with SDCL 21-21-9, the Commission shall submit Proposed Findings of Fact, Conclusions of Law and Decision after consideration of all claims presented to the Commission.

WHEREFORE, the Commission requests that this Court:

- (1) issue an order pursuant to SDCL 49-43-5.6 and 49-45-16 and SDCL Chapter 21-21 appointing the Commission as receiver over the grain warehouseman's and grain dealer's bonds and all grain inventory described in the Petition;
- (2) issue an order requiring Employers Mutual Casualty Company to pay to the Commission such amounts as may be due under the above-described bonds as determined by the Commission subject to the final approval of this Court;
- (3) authorize the Commission to act as referee at a hearing for the purposes of determining the valid claims against the bonds and the grain inventory and to make a proposal regarding the distribution of monies due under the bond and the grain inventory for this Court's approval; and
- (4) waive surety requirements imposed by SDCL 21-21-6 and 21-21-8 because the Commission is an agency of the State of South Dakota and the Commissioners are covered under the state employees' blanket bond pursuant to SDCL 49-1-6.

Dated this ____ day of _____, 2001

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