

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
ABERDEEN**

**IN RE:  
EXPRESS GRAIN TERMINALS, LLC<sup>1</sup>  
Debtor**

**Case No. 21-11832-SDM  
Chapter 11**

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**MOTION FOR RELIEF FROM AUTOMATIC STAY**

The Mississippi Department of Agriculture and Commerce (“Department”) moves the Court for relief from the automatic stay in this Chapter 11 case to allow the Commissioner of the Department, or his designated representative, to commence and/or continue regulatory and judicial proceedings to enforce the Department’s police and regulatory powers under relevant provisions of Miss. Code Ann. §§ 75-44-1 *et seq.*, to suspend, cancel and/or revoke the Grain Warehouse Licenses Nos. 145-WH (Sidon), 187-WH (Greenwood) and 188-WH (Minter City) issued to John Coleman, Express Grain Terminals, LLC (“Express Grain” and/or “Debtor”), and related authority to operate as a Grain Dealer, all set to expire June 30, 2022. In support of its Motion, the Department states:

**Jurisdiction and Venue**

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 362 and 541, and the Order granting automatic reference to this Bankruptcy Court. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157.

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<sup>1</sup>Petitions for relief also were filed by Express Biodiesel, LLC Case No. 21-11834-SDM, and Express Processing, LLC, Case No. 21-11835-SDM. On November 18, 2021, the Court entered its Order Granting Joint Administration of the cases under Case No. 21-11832-SDM. [Dkt 1158].

**Parties**

2. On September 29, 2021 (the “Petition Date”), the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* Currently, the Debtor continues to manage and operate its business as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. Pursuant to the provisions of Miss. Code Ann. §§ 75-44-1 *et seq.* (the “Grain Warehouse Law”), the Department is the State of Mississippi governmental unit granted statutory and regulatory jurisdiction over the operation of Debtor’s business as a grain warehouse.

**Facts**

4. The Debtor is a “grain warehouseman” as defined by Miss. Code Ann. § 75-44-5(f). The Debtor is subject to the provisions of the Grain Warehouse Law and the regulatory authority granted the Commissioner to carry out and enforce the provisions of the Grain Warehouse Law. Miss. Code Ann. § 75-44-7. Additionally, the Debtor operates as a Grain Dealer in Mississippi pursuant to the requirements of Miss. Code Ann. § 75-45-304.

5. The Debtor was prohibited from operating a grain warehouse or issuing a warehouse receipt, and from operating as a Grain Dealer unless it first obtained a license pursuant to the Grain Warehouse Law. Miss. Code Ann. § 75-44-9 and Miss. Code Ann. § 75-45-304. The Debtor’s application(s) for a license had to be accompanied by a certified financial statement in a form prescribed by the Commissioner and any other information as the Commissioner may have required by regulation. Miss. Code Ann. § 75-44-11.

6. The Department’s issuance of Grain Warehouse Licenses Nos. 145-WH (Sidon), 187-WH (Greenwood) and 188-WH (Minter City) to John Coleman, Express Grain Terminals LLC

(Exhibit "A"), set to expire June 30, 2022, were specifically conditioned on the Debtor's compliance with the requirements of the Grain Warehouse Law.

7. As a licensee, the Debtor is required at least annually to send to the Commissioner a copy of its financial statement prepared by an accountant licensed by the State of Mississippi and sworn to by the accountant and the Debtor. Miss. Code Ann. § 75-44-43(2). The Debtor's obligation to send to the Commissioner annual sworn financial statements is in addition to its obligation to submit a "certified financial statement" accompanying its license application. Miss. Code Ann. § 75-44-11.

8. Prior to the expiration of its 2020 licenses, consistent with the requirements of the Law, the Debtor applied for renewal of its licenses for an additional year. In support of its application for renewal, the Debtor submitted what it represented to the Department to be an Independent Auditor's Report dated February 3, 2021. Based upon the Debtor's application for renewal and the supporting documentation accompanying the application including, but not limited to, the Independent Auditor's Report and examination of the documentation, the Department renewed the licenses for another year.

9. However, after the Department issued the Grain Warehouse Licenses effective July 1, 2021, the Department recently discovered evidence that shows the Debtor may have materially misrepresented its financial condition when it applied for renewal of its 2021 licenses.

10. In accordance with the Law, Horne, LLP, a public accounting firm, audited the combined financial statements of Express Grain as of June 30, 2020 and 2019. On May 20, 2021, Horne, LLP issued an Independent Auditor's Report of said audit. (Ex. "B")

11. On May 27, 2021 Express Grain submitted what it purported to be the audit report by

Horne to the Department in support of documentation required for the renewal of its licenses. (Ex. "C") However, the report submitted by Express Grain to the Department was not the same as the May 20, 2021 Report submitted to Express Grain by Horne, LLP, a copy of which was obtained by the Department pursuant to its demand on Horne, LLP dated December 17, 2021. Several differences were noted, such as:

- a. Removal of "Emphasis of Matter Regarding going Concern" on p. 2.
- b. Alteration of Operating Income on p. 2 from a loss to positive income.
- c. Changing Horne, LLP's letterhead by substituting a letterhead format that Horne, LLP no longer uses.
- d. Numerous other material alterations to be shown on a hearing hereof.

The Department believes the alterations made by Express Grain to Horne, LLP's May 20, 2021 Report were made with intent to deceive the Department concerning Express Grain's true financial condition and were willful, intentional, malicious, deliberate and were not the result of an honest mistake, inadvertence or oversight.

12. Based upon this evidence, the Commissioner has determined that investigations/hearings are necessary concerning the Debtor's applications for licenses and renewals of licenses for years including, but not limited to, 2019, 2020, 2021 and 2022 to determine whether the Debtor's obligations under the Law have been faithfully performed.

13. The Department's request for stay relief is for cause, is in the interest and service of public welfare and falls within the exception to the automatic stay under § 362(b)(4). *Board of Governors of Federal Reserve System v. MCorp Financial, Inc.*, 502 U.S. 32, 39-40, 112 S.Ct. 459,

463-64 (1991)(board's actions fall within § 362(b)(4); automatic stay will not reach enforcement of “governmental unit's police or regulatory power.”); *In re Halo Wireless, Inc.*, 684 F.3d 581, 595 (5th Cir.2012)(same); *In re McMullen*, 386 F.3d 320, 325 (1st Cir. 2004)(board’s proceeding to revoke unscrupulous real estate broker’s license constituted actions taken to benefit the public welfare); *In re Wyly*, 526 B.R. 194, 201 (N.D. Tex. 2015)(same); and, *In re National Cattle Congress, Inc.*, 179 B.R. 588, 596-97 (N.D. Iowa 1995)(agency given every reasonable opportunity to carry out duties within governmental framework).

14. A final determination will be made at a hearing before the Commissioner or his designated representative.

**Relief Requested**

WHEREFORE, the Mississippi Department of Agriculture and Commerce requests that the Court grant the Department relief from the automatic stay so that it may:

- a. commence and/or continue regulatory and judicial proceedings to enforce its police and regulatory powers under relevant provisions of Miss. Code Ann. §§ 75-44-1 *et seq.*, to suspend, cancel and/or revoke the Grain Warehouse Licenses Nos. 145-WH (Sidon), 187-WH (Greenwood) and 188-WH (Minter City) issued to John Coleman, Express Grain Terminals LLC (“Debtor”), and related authority to operate as a Grain Dealer, all set to expire June 30, 2022, including, but not limited to, conducting administrative proceedings to determine whether such licenses should be suspended, canceled and/or revoked;
- b. exercise such other police and regulatory power as may be permissible under applicable state law; and,

- c. exercise such other and further relief as the Court deems proper and just under the facts of this case.

DATED: December 20, 2021.

Respectfully submitted,  
**MISSISSIPPI DEPARTMENT OF  
AGRICULTURE AND COMMERCE**

By its attorneys,  
McKAY LAWLER FRANKLIN  
& FOREMAN, PLLC

/s/ Edward E. Lawler, Jr.

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**CERTIFICATE OF SERVICE**

I, Edward E. Lawler, Jr., certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of such filing to all parties requesting notice.

DATED: December 20, 2021.

/s/ Edward E. Lawler, Jr.

Edward E. Lawler, Jr.