

IN THE CHANCERY COURT OF LEFLORE COUNTY, MISSISSIPPI

EXPRESS GRAIN TERMINALS, LLC

PLAINTIFF

v.

CAUSE NO. 22-CV-23

MISSISSIPPI DEPARTMENT OF  
AGRICULTURE AND COMMERCE

DEFENDANT

NOTICE OF APPEAL

PLEASE TAKE NOTICE THAT pursuant to Section 7544-25, Miss Code Ann., Express Grain Terminals, LLC ("EGT") files this its *Notice of Appeal*, and in support thereof would respectfully respond as follows, to-wit:

1. EGT appeals from the Order of the Mississippi Department of Agriculture and Commerce ("MDAC") filed February 10, 2022, a copy of which is attached, incorporated by reference and marked as Exhibit "A".

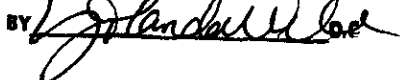
2. The parties/interested parties in connection with this appeal are as follows:

- a. Andy Gipson, Commissioner of the Mississippi Department of Agriculture and Commerce, P.O. Box 1609, Jackson, Mississippi 39215-1609;
- b. State of Mississippi/Department of Agriculture and Commerce, P.O. Box 1609, Jackson, Mississippi 39215-1609 or 121 N. Jefferson Street, Jackson, Mississippi 39201;
- c. Express Grain Terminals, LLC, 808 12<sup>th</sup> Street, Greenwood, Mississippi 38930;
- d. Edward E. Lawler, Jr., Esq., McKay Lawler Franklin & Foreman, PLLC, counsel for the Mississippi Department of Agriculture and Commerce, P.O. Box 2488, Ridgeland, MS 39158-3488;

**FILED**

MAR 11 2022

JOHNNY L. GARY, JR., CHANCERY CLERK

BY  JLG

- e. Robert W. Graves, Mississippi Attorney General's Office, P.O. Box 220, Jackson, Mississippi 39205, or 501 N. West Street, Woolfolk Annex #207, Jackson, Mississippi 39201; and
- f. Craig M. Geno, Esq., Law Offices of Craig M. Geno, PLLC, counsel for Express Grain Terminals, LLC, 587 Highland Colony Parkway, Ridgeland, Mississippi 39157;

3. The grounds for appeal are as follows, to-wit:

- a. In the findings of fact and conclusions of law attached as Exhibit "A", the Commissioner found that the Licenses issued to EGT were never lawfully issued to EGT. This finding of fact/conclusion of law is appealed from because the statutory authority given to the Commissioner does not authorize him to make findings of fact or conclusions of law with respect to whether licenses were ever lawfully issued to EGT; and
- b. The Commissioner exceeded his authority and ability to declare that the Licenses and grain dealer authority were revoked *ab initio* and were determined to be null and void *ab initio* and without legal effect since July 1, 2021.

4. The Commissioner lacked authority to make the above described findings of fact and conclusions of law in connection with whether the Licenses were ever validly issued and/or whether they were void *ab initio*.

5. The statutes giving rise to the ability of the Commissioner with respect to grain warehouse licenses are limited to whether licenses can be issued, and if issued, whether they can be revoked. The statutes do not authorize the Commissioner to make findings of fact/conclusions of

law such as were made here where the Commissioner found the Licenses were never lawfully issued to EGT and/or they were void *ab initio*. Even if the Commissioner had the authority to make such findings/conclusions, they are contrary to established precedent in Mississippi and are appealed from on that ground as well.

6. The above are the grounds for appeal from the Order of the Commission.

SO APPEALED THIS, the 11<sup>th</sup> day of March, 2022.

Respectfully submitted,

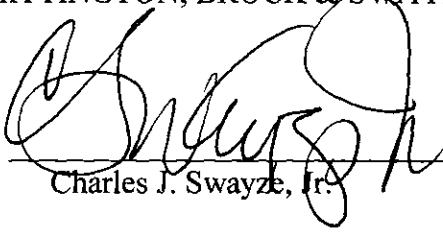
EXPRESS GRAIN TERMINALS, LLC

By Its Attorneys,

LAW OFFICES OF CRAIG M. GENO, PLLC

By: /s/ Craig M. Geno  
Craig M. Geno

WHITTINGTON, BROCK & SWAYZE, P.A.

By:   
Charles J. Swayze, Jr.

OF COUNSEL:

Craig M. Geno; MSB No. 4793  
LAW OFFICES OF CRAIG M. GENO, PLLC  
587 Highland Colony Parkway  
Ridgeland, MS 39157  
601-427-0048 - Telephone  
601-427-0050 - Facsimile  
[cmgeno@cmgenolaw.com](mailto:cmgeno@cmgenolaw.com)

-and-

Charles J. Swayze, Jr.; MSB No. 8099  
Charles J. Swayze, III; MSB No. 102297  
Whittington, Brock & Swayze, P.A.  
P.O. Box 941 (Zip 38935)  
308 Fulton Street  
Greenwood, MS 38930  
662-453-7325 - Telephone  
662-453-7394 - Facsimile  
Email: [cjs@whittingtonlaw.com](mailto:cjs@whittingtonlaw.com)  
Email: [cjsiii@whittingtonlaw.com](mailto:cjsiii@whittingtonlaw.com)

C:\Users\Meredith\AppData\Local\Microsoft\Windows\NetCache\Content.Outlook\87PPV2KO\Notice of Appeal - Leflore Co. Chancery Court 3-11-22.wpd

### CERTIFICATE OF SERVICE

I, Craig M. Geno, do hereby certify that I have caused to be served this date, via hand delivery, a true and correct copy of the above and foregoing pleading to the following:

Andy Gipson  
Commissioner of the Mississippi  
Department of Agriculture and  
Commerce  
P.O. Box 1609  
Jackson, Mississippi 39215-1609

Robert W. Graves, Esq.  
Mississippi Attorney General's  
Office  
501 N. West Street  
Woolfolk Annex #207  
Jackson, MS 39201

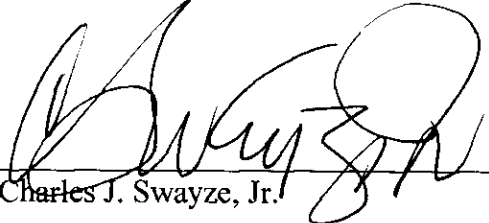
State of Mississippi/Department of  
Agriculture and Commerce  
P.O. Box 1609  
Jackson, Mississippi 39215-1609

Robert W. Graves, Esq.  
Mississippi Attorney General's  
Office  
P.O. Box 220  
Jackson, Mississippi 39205

State of Mississippi/Department of  
Agriculture and Commerce  
121 N. Jefferson Street  
Jackson, MS 39201

Edward E. Lawler, Jr., Esq.  
[elawler@mckaylawler.com](mailto:elawler@mckaylawler.com)

THIS, the 11<sup>th</sup> day of March, 2022.

  
Charles J. Swayze, Jr.