

**BEFORE THE MISSISSIPPI DEPARTMENT OF
AGRICULTURE AND COMMERCE**

**IN THE MATTER OF EXPRESS
GRAIN TERMINALS, LLC**

NO. 2021-0206-AC

ORDER

THIS DAY this cause came on for consideration of the Petition to Cancel and/or Revoke Grain Warehouse Licenses, which was filed herein by Gene Robertson, Director of the Grain Division of the Mississippi Department of Agriculture and Commerce, Petitioner herein. The Petitioner seeks to revoke the grain warehouse licenses held by Express Grain Terminals, LLC, (hereinafter, "Express Grain" or "Respondent"). Copies of the Petition and Summons having been served on the Respondent for the time and in the manner required by law, and the Department having held a hearing herein on February 3, 2022, in which the Petitioner and Respondent and their respective counsel appeared and presented evidence and argument to the undersigned Commissioner, and being fully advised in the premises, I do hereby make the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Mississippi Department of Agriculture and Commerce (hereinafter, "Department") is an agency of the State of Mississippi. Express Grain is a Mississippi limited liability company. The Department, as an agency of the State of Mississippi, has jurisdiction of the subject matter and parties herein and has the statutory, regulatory and police powers to investigate and enforce matters within its

jurisdiction. See Miss. Code Ann. §§ 75-44-7, 25, 43(1) and (2), and 71; Miss. Agri. Regs., Title 2, Part 1, Subpart 2, Chapter 10 § 101; *Board of Governors v. MCorp Financial, Inc.*, 502 U.S. 32, 39 (1991)(agency given wide latitude in carrying out function enforcing government's police or regulatory power); *Hollywood Cemetery Ass'n v. Board of Mayor and Selectmen of City of McComb City*, 760 So.2d 715, 718-19 (Miss. 2000)(rule well-established that exercise of police power is valid if it protects and promotes public health, safety, morality or welfare); and *Great South Fair v. City of Petal*, 548 So.2d 1289, 1291 (Miss. 1989)(police power is right of government to promote public health, safety, morals, general welfare, peace, order, public comfort and convenience). At issue is the determination related to the status of certain licenses issued to Express Grain, and whether such licenses should be cancelled or revoked. The Department expressly retains jurisdiction over the enforcement of this, or any other Order against Express Grain, and over any other issues related to Express Grain as a licensee of the Department, including, but not limited to, any future determination of valid claims on any bond delivered to the Department by/for Express Grain or its surety.

Grain warehouses operating in this state are governed by the Mississippi Grain Warehouse Law (hereinafter, "the Act"). *Miss. Code Ann.* §75-44-1, et. seq. The Commissioner of the Department is charged with the duty of carrying out and enforcing the provisions of the Act. *Miss. Code Ann.* §75-44-7. A person may not operate a grain warehouse in this state unless it has obtained a license pursuant to the terms of the Act. *Miss. Code Ann.* §75-44-9.

Every person applying for a grain warehouse license must submit to the Department a written application, application fee, certified financial statement, required bond and such further information as the commissioner may by regulation require. *Miss. Code Ann.* §75-44-11. Additional requirements are stated as follows:

Each application for license or renewal thereof shall be accompanied by a financial statement prepared by an independent public accountant and the grain warehouseman. The accountant, in addition to preparing the financial statement, must check and certify to the accuracy of the accounts receivable and listed inventories. Such financial statement to include, but not limited to, a balance sheet and operating statement as of the close of the most recent fiscal year. *Miss. Agri. Regs.*, Title 2, Part 1, Subpart 2, Ch. 10, §102.03

In addition to the records required by subsections 120.01 and 120.02 of this chapter, the warehouseman shall maintain such adequate financial records as will clearly reflect his current financial position and as will clearly support such financial information as is required to be submitted to the Commissioner from time to time. *Miss. Agri. Regs.*, Title 2, Part 1, Subpart 2, Ch. 10, §120.03(1).

Furthermore, every grain warehouse must also at least annually provide the Commissioner a copy of its financial statement prepared by an accountant licensed by the state and sworn to by the accountant and the grain warehouseman. *Miss. Code Ann.* §75-44-43(2).

Based on the information submitted to the Department in Express Grain's sworn applications for grain warehouse licenses dated June 2, 2021, including the required surety bond, the Department previously issued the following described grain warehouse licenses to Express Grain, to-wit:

1. "John Coleman Express Grain Terminals, LLC, Greenwood", License No. 187-WH, expires 6/30/22.

2. "John Coleman Express Grain Terminals, LLC, Sidon", License No. 145-WH, expires 6/30/22.
3. "John Coleman Express Grain Terminals, LLC, Minter City", License No. 188-WH, expires 6/30/22. (hereinafter, "Licenses")

In its applications, Express Grain also sought to operate as a grain dealer buying or selling grain, pursuant to the Mississippi Grain Dealer Law, Miss. Code Ann. §75-45-1, et. seq. As a grain warehouse under the Act, Express Grain was not required to obtain a separate grain dealer's license as provided in Miss. Code Ann. §75-45-304. Express Grain filed with the Department a separate surety bond related to its proposed activities as a grain dealer as required by Miss. Code Ann. §75-45-305(1). This information is reflected on each of the Licenses issued to Express Grain.

As required by Miss. Code Ann. §75-45-19, each License was required to be posted for the public "in a conspicuous place in the office of the grain warehouse to which such license applies." Moreover, each License bears the following disclaimer:

This license is conditioned on compliance with the requirements of the aforesaid Code and is effective pending cancellation, suspension, or revocation by the Commissioner of Agriculture and/or discontinuance notice to the Commissioner of Agriculture by said Warehouse.

See composite Exhibit 8 admitted into evidence at the hearing held on February 3, 2022.

In connection with its applications for the Licenses for FY 2021-22, Respondent engaged the services of Horne, LLP ("Horne"), a public accounting firm. Horne then audited the combined financial statements of Express Grain as of June 30, 2020 and 2019 in accordance with the aforesaid regulations. On May 20, 2021, Horne issued

an Independent Auditor's Report of said audit and delivered said report to Express Grain ("Correct Horne Report"). See Exhibit 1.

On May 27, 2021, Express Grain submitted to the Department what it represented to be the Independent Auditor's Report by Horne, being dated February 3, 2021 ("False Horne Report"), as part of the documentation required for issuance of Respondent's Licenses for FY 2021-22. See affidavit of Gene Robertson, Exhibit 2, and Exhibit 7, the June 2021, Application of Express Grain.

Based on the uncontroverted evidence presented at the hearing in this matter, I do hereby find that the False Horne Report and related financial statements submitted by Express Grain to the Department is not the report submitted by Horne to Express Grain, dated May 20, 2021. The Correct Horne Report has been materially altered by Express Grain in many respects, some of which are:

1. Removal of the section of the audit opinion entitled "Emphasis of Matter Regarding Going Concern" on p. 2.
2. Alteration of amount of assets from \$102M to \$115M on p. 3.
3. Alteration of amount of liabilities from \$99M to \$90M on p. 3.
4. Alteration of an operating loss of \$20M to operating income of \$162K on p. 4.
5. Alteration of net loss of \$21M to \$1.8M on p. 4.
6. Alteration of members' equity from \$2M to \$24M on p. 5.
7. Numerous other material alterations of Horne's audit report as shown on the highlighted version admitted in evidence.
8. Changing Horne's letterhead by substituting a letterhead format that Horne no longer uses.

See Exhibit 3, the marked version of Exhibit 1 prepared by witness Joe Green of Horne, LLP.

From the nature of the alterations as presented by witness Joe Green at the hearing, I find that the alterations made to the Correct Horne Report by Express Grain were done willfully, intentionally, knowingly, deliberately and were not the result of an honest mistake, inadvertence or oversight and amounted to forgery.

I find that Express Grain made material alterations to the Correct Horne Report and submitted the False Horne Report to the Department for the purpose of fraudulently obtaining grain warehouse licenses and grain dealer authority under false pretenses.

I find based on the testimony of Gene Robertson, Director of the Department's Grain Division, that if Department officials had known that the False Horne Report had been forged, or had they known that fraud had been perpetrated by Express Grain, the Department would not have issued the Licenses to Express Grain.

I find further based on the testimony of Gene Robertson that if the Correct Horne Report and related combined financial statements for the years ended June 30, 2020 and 2019 had been filed with the Department, including the Emphasis of Matter Regarding Going Concern contained in the Correct Horne Report, the Department would not have issued the Licenses to Express Grain.

Based on the evidence submitted as Exhibits 4, 5, 9 and 10 at the hearing (the actual financial statements and audits prepared by Horne LLP for previous fiscal years ended June 30, 2019 and 2018 and June 30, 2018 and 2017 admitted into

evidence as Exhibits 4 and 5, and the altered financial statements submitted by Express Grain to the Department for the same periods in Exhibits 9 and 10), this scheme of altered financial statements and audit reports appears to have been part of an ongoing fraud regarding Express Grain's filings with the Department since at least 2019.¹

CONCLUSIONS OF LAW

The Department's issuance of the Licenses was specifically conditioned on Express Grain's compliance with the requirements of the Grain Warehouse Law.

Based upon the facts determined above, I hereby find and determine that Express Grain committed multiple violations of the Act and rules and regulations thereunder, including specifically Miss. Code Ann. §75-44-11, §75-44-43(2) and *Miss. Agri. Regs.*, Title 2, Part 1, Subpart 2, Ch. 10, §102.03 relating to financial statement requirements and audits. See Exhibit 6, a copy of the pertinent regulations.

I find that each of these violations occurred as part of Express Grain's applications prior to the issuance of the Licenses by the Department, such that the Licenses were both fraudulently sought and obtained on the basis of material misrepresentations contained in the applications and accompanying documents. Specifically, I find that Express Grain's Applications submitted to the Department on June 2, 2021 and admitted into evidence as Exhibit 7, were fraudulent, as demonstrated by the sworn verification dated May 26, 2021 of John Coleman as

¹ Exhibits 4, 5, 9 and 10 suggest altered financial statements and audit reports were part of an ongoing fraud since 2019. However, Exhibits 4, 5, 9 and 10 are not relied upon as support for the findings of fact and conclusions of law herein.

President of Express Grain, coupled with Express Grain's submission of the uncontested altered and falsified False Horne Report and financial statements.

Mississippi law provides that if the Commissioner determines that any grain warehouseman has violated any of the provisions of the Act, or any of the rules and regulations adopted by the Commissioner pursuant to the Act, the Commissioner may, at his discretion, suspend, cancel or revoke the license of such grain warehouseman. *Miss. Code Ann.* §75-44-25(1). The law provides that no license shall be cancelled or revoked except after a hearing before the Commissioner upon reasonable notice to the licensee and an opportunity to appear and defend. *Miss. Code Ann.* §75-44-25(2). After due and proper notice to all parties, a hearing was held on February 3, 2022 at the office of the Department at which time Express Grain appeared through Dennis Garrard, CRO, and its counsel, but did not deny or contest the falsified 2021 Application, the financial statements or the False Horne Report.

I do hereby find that Express Grain's alteration of the Correct Horne Report and the submission of the False Horne Report to the Department were in violation of *Miss. Code Ann.* §75-44-11, 75-44-43(2) and the above-described statutes and regulations, and that said Licenses were fraudulently applied for and obtained.

Fraud vitiates everything it touches. This is a well-founded, long-recognized principle under Mississippi law. *Telephone Man, Inc. v. Hinds County*, 791 So.2d 208, 211 (Miss. 2001)(citing *J.A. Fay & Egan Co. v. Louis Cohn & Bros.*, 158 Miss. 733, 740, 130 So. 290, 292 (1930)). Where a license or authority is sought and obtained on the basis of fraud and in violation of statutory law, the license or authority is not

merely “voidable,” but is void *ab initio*. See *Ground Control, LLC v. Capsco Industries, Inc.*, 120 So.3d 365, 374 (Miss. 2013)(lack of certificate of responsibility rendered contract null and void); *Sun Mut. Ins. Co. v. Searles*, 18 So. 544, 545 (Miss. 1895)(contract entered in violation of statute is void); *King Metal Buildings, Inc., v. Renasant Insurance, Inc.*, 159 So.3d 567, 576 (Miss. Ct. App. 2014)(contract entered in violation of statute renders contract void). See also *In re Northlake Development LLC*, 643 F.3d 448, 450-51 (5th Cir. 2011)(deed purporting to transfer company’s interest in property without authority was void). The egregious uncontested facts of this case present the unusual situation where Express Grain’s violation and fraud occurred prior to the issuance of the Licenses, not afterward. Therefore I find that the Licenses issued to Express Grain were and are the product of fraud, and because Mississippi law deems these Licenses void, I find the Licenses were never lawfully issued to Express Grain.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the above-described Licenses and grain dealer authority issued by the Department to Express Grain Terminals, LLC were obtained on the basis of fraud and are hereby revoked *ab initio* and are determined and deemed to be null and void *ab initio* and without legal effect since July 1, 2021, to-wit:

1. “John Coleman Express Grain Terminals, LLC, Greenwood”, License No. 187-WH, expires 6/30/22.
2. “John Coleman Express Grain Terminals, LLC, Sidon”, License No. 145-WH, expires 6/30/22.
3. “John Coleman Express Grain Terminals, LLC, Minter City”, License No. 188-WH, expires 6/30/22.

Moreover, I find that Express Grain violated the conditions of its Licenses before they were ever issued, by virtue of the fraudulent misrepresentations contained in the Application of Express Grain.

ORDERED AND ADJUDGED on this, the 10th day of February, 2022.

A handwritten signature in blue ink, appearing to read "Andy Spivey", written over a horizontal line.

COMMISSIONER, MISSISSIPPI
DEPARTMENT OF AGRICULTURE
AND COMMERCE