

FILED
FULTON COUNTY
COMMON PLEAS COURT
2011 NOV 23 A 10:45
PAUL E. MACDONALD
CLERK

IN THE COURT OF COMMON PLEAS
FULTON COUNTY, OHIO

THE FARMERS & MERCHANTS
STATE BANK,

Plaintiff,

-vs-

ARCHBOLD ELEVATOR, INC., et al.,

Defendants.

-) Case No. 11CV000128
-) Judge Barber
-) **RECEIVER'S FIFTH MOTION TO APPROVE PARTIAL SALE AND MEMORANDUM IN SUPPORT**
-) Gerald R. Kowalski (0022323)
Renisa A. Dorner (0040192)
-) COOPER & WALINSKI, LPA
900 Adams Street
Toledo, Ohio 43604
Telephone: (419) 241-1200
Telefax: (419) 720-3421
Email: kowalski@cooperwalinski.com
dorner@cooperwalinski.com
-) Receiver and Counsel

Now comes the Receiver and hereby moves this Court for an order approving the sale of the Receivership assets at the Henry Pig facility (real estate, breeding sow stock and other assets for \$465,000), the assets at the O-Mi-O facility (real estate, breeding sow stock and other assets for \$325,000) and the Kainos Nursery facility (real estate, equipment and machinery).

MEMORANDUM

In the Receiver's Sixth Status Report, the Receiver indicated that it was negotiating the sale of the remaining assets of the Archbold entities with the bidders. This process is now

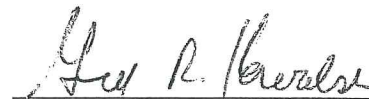
complete. Qualified bids have been received for the Henry Pig, O-Mi-O and Kainos Nursery. Only one bid was submitted for the Henry Pig facility (Exhibit A) and Kainos Nursery (Exhibit B) and the Receiver recommends approval of these bids. Three qualified bids for the O-Mi-O facility were submitted and as a result of negotiations, the Receiver seeks approval to sell this facility to Centaur Associates, the highest bidder (Exhibit C). The successful bidder for the Henry Pig facility has formed an LLC, Flatrock Pork, LLC, which will purchase the assets. The successful bidder for O-Mi-O has also formed an LLC, MMDS Investments, LLC, which will purchase those assets.

The Receiver believes that these sales are in the best interest of the Receivership. The Receiver believes that the proposed prices, although low, are commercially reasonable under the circumstances and are not inconsistent with the analysis performed by Veid & Veid on May 16, 2011.

The Receiver has obtained the unequivocal consent of all parties / creditors except for William and Lynnette Fricke. As the Court is aware, William Fricke submitted bids for these assets but the Court disqualified his bids. Therefore, so as not to waive his previous position, a qualified consent has been given by William and Lynnette Fricke (Exhibit D) in order to allow these sales to proceed.

Therefore, the Receiver moves this Court for an order approving the sale of these assets as indicated above.

Respectfully submitted,



Gerald R. Kowalski, Receiver
Renisa A. Dornier
Receiver and Counsel

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CERTIFICATE OF SERVICE

This is to certify that on this 22nd day of November, 2011, a copy of the foregoing
Receiver's Fifth Motion to Approve Partial Sale and Memorandum in Support was served by
email and ordinary United States mail upon:

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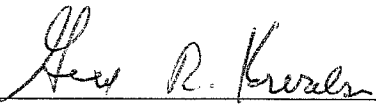
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CT Corporation System
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Cleveland, Ohio 44114



Gerald R. Kowalski, Receiver
Renisa A. Dorner
Receiver and Counsel

Mark and Stephanie Sattler

30233 Gerken Rd

Defiance, Ohio 43512

Attn: Archbold Elevator Inc. Gerald Kowalski—Receiver

August 29, 2011

Mark and Stephanie Sattler hereby submit a bid of \$465,000.00 (Four Hundred Sixty-Five Thousand Dollars) to purchase Land, Buildings, Equipment, Breeding Livestock and Pig Inventory at the Henry Pig location of the Archbold Elevator Entities.

The bid includes but not limited to:

- Land
- Buildings and Equipment
- House
- Breeding sow inventory
- Pig inventory
- Pig Bus
- John Deere 4020 tractor
- Hydraulic pig cart
- John Deere 6' chopper
- Pressure washer
- All other necessary supplies and equipment to run day to day operations

Bid Price is based off of a breeding sow inventory of 900 head and 65 gilts in gilt isolation. Adjustments of \$350/head will be made to account for changes in inventory at the time of closing.

Contact information:

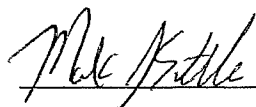
Mark Sattler

419-466-2134 cell

419-758-3414 home

msattler@fulton-net.com

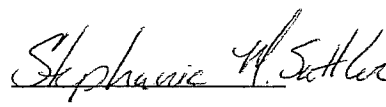
msattler@bright.net



Mark J. Sattler

8-29-11

Date

 8/29/11

Stephanie M. Sattler

Date

Exhibit A

Gerry Kowalski

From: Paul Kalmbach [paul.kalmbach@kalmbachfeeds.com]
Sent: Wednesday, August 31, 2011 7:33 AM
To: Gerry Kowalski
Cc: Dick Regnier; Andy Bishop; Jeff Neal
Subject: Bid - Kainos Nursery Facility

Dear Mr. Kowalski:

I apologize for being 8 hours late on my bid submission. I was thinking the bid was due the last day of August.

With that in mind, Kalmbach Feeds would like to submit a bit of \$125,000.00 for the six-acre Kainos Nursery Facility in Fulton county.

We will send in the required one percent today.

Sincerely yours,

Paul M. Kalmbach

This message and any attachments are confidential and are intended only for the individual or entity named above. If you are not the intended recipient, please do not forward, copy, print, use or disclose this communication to others; also please notify the sender by replying to this message, and then delete it from your system. Kalmbach Feeds, Inc. / Kalmbach Trucking, Inc. / Kalmbach Swine Management, L.L.C.

Exhibit B

Michael Walters
Denise Kamcza
Mark Sattler
Steven Brink

Attn: Gerald Kowalski, Receiver

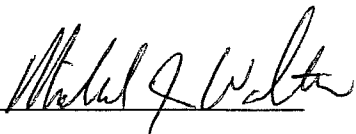
The above 4 mentioned individuals submit a bid of \$325,000 (Three hundred Twenty-Five Thousand Dollars) to purchase the OMIO operations of the Archbold Elevator Entities.

The bid includes:

- 1) Land
- 2) Buildings and Equipment
- 3) House
- 4) Breeding Sow Inventory
- 5) Pig Inventory
- 6) Pig Bus
- 7) John Deere 4010 Tractor
- 8) Mower
- 9) Pressure Washer
- 10) All other necessary supplies and equipment to allow day to day functions to operate properly.

Bid price is based upon a breeding sow inventory of 725 head and 60 gilts in the gilt isolation building.

Respectfully submitted,



A handwritten signature in cursive script, appearing to read "Michael Walters", is written over a horizontal line.

Michael Walters

Exhibit C

**IN THE COURT OF COMMON PLEAS
FULTON COUNTY, OHIO**

THE FARMERS & MERCHANTS
STATE BANK,

Plaintiff,

-vs-

ARCHBOLD ELEVATOR, INC., et al.,

Defendants.

) Case No. 11CV000128

) Judge Barber

) **CONSENT TO SELL ASSETS**

) Gerald R. Kowalski (0022323)

) Renisa A. Dorner (0040192)

) COOPER & WALINSKI, LPA

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) Telephone: (419) 241-1200

) Telefax: (419) 720-3421

) Email: kowalski@cooperwalinski.com

) dorner@cooperwalinski.com

) Receiver and Counsel

)

The Receiver filed a Motion for Instructions concerning the sale of the assets at the O-MI-O, Henry Pig and Kainos nursery facilities. The Receiver sought instructions from the Court since the Receiver had been presented with a bid that it did not believe met the bid qualifications. In particular, the Receiver questioned the bids submitted by William L. Fricke. A Memorandum in Response to Receiver's Motion for Instructions was filed on behalf of William and Lynnette Fricke on October 31, 2011, and a Supplement to Memorandum in Response to Receiver's Motion for Instructions was filed on November 1, 2011. On November 1, 2011, the Court

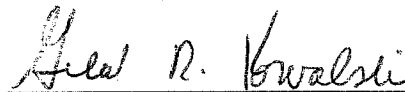
Exhibit D

conducted a hearing on the Receiver's motion. As a result of that hearing, the Court disqualified the bid of the Fricke since they had not provided proof of adequate financing.

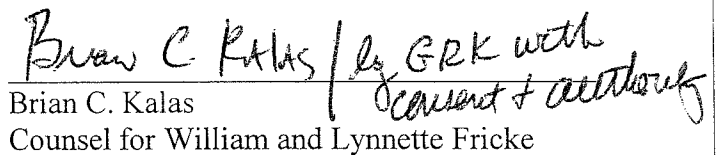
With the disqualification of the Fricke bid, the Receiver then conducted further negotiations with the bids submitted for these assets. With the disqualification of the Fricke bid, the only bid for the Henry Pig facility was a bid submitted by Mark and Stephanie Sattler in the amount of \$465,000. Similarly, the only bid for the Kainos nursery facility was a bid submitted by Kalmbach Feeds in the amount of \$125,000. There were three remaining bids for the O-Mi-O facility. One of the bidders withdrew his bid at the conclusion of the hearing and the Receiver then conducted negotiations with the two remaining bids. The highest bid was submitted by Centaur Associates, Inc. in the amount of \$325,000.

The Receiver has sought the consent of all parties / creditors to the sale of these assets. All parties have consented without reservation except William and Lynnette Fricke. William and Lynnette Fricke recognize that these assets must be sold. Therefore, the Fricke's acknowledge these sales without additional objection but such acknowledgment is not deemed to be a waiver of the position that they asserted in favor of their bids nor is the Fricke's acknowledgement deemed to be an acknowledgement that their bids were not appropriate.

Respectfully submitted,



Gerald R. Kowalski, Receiver
Renisa A. Dornier
Receiver and Counsel

 *by GRK with consent + authority*
Brian C. Kalas
Counsel for William and Lynnette Fricke