



National Grain and Feed Association

Arbitration Decision

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November 21, 2006

Arbitration Case Number 2145

Plaintiff: Central Distributing Co. Inc., Knoxville, Tenn.

Defendant: High Country Mercantile Inc., Cody, Wyo.

Statement of the Case

Central Distributing Co. Inc. ("Central") and High Country Mercantile Inc. ("High Country") entered into two contracts for stripe sunflowers (*Central contract number 595/High Country contract number 1012; Central contract number 611/High Country contract number 1030*).

Each contract provided for the sale of 88,000 pounds (two truckloads) of sunflowers from Central to High Country. Contract number 595/1012 was priced at \$33/cwt.; contract number 611/1030 was priced at \$36/cwt. Both contracts were finalized by High Country's approval of samples provided from Central's source for the sunflowers.

One truckload of sunflowers under contract number 611/1030 was shipped and discounted because of quality factors. Another truckload was shipped under contract number 595/1012, and subsequently was rejected because of quality issues.

On March 22, 2005, High Country sent notices to Central cancelling – effective March 23, 2005 – one load of 44,000 pounds of sunflowers under contract number 595/1012, and the second load of 44,000 pounds of sunflowers under contract number 611/1030. On April 8, 2005, High Country sent a notice to Central cancelling the second load under contract number 595/1012. This dispute concerned the three cancelled loads.

The Decision

In arriving at a decision, the arbitrators referenced NGFA Grain Trade Rule 28 (B) [*Buyers Non-Performance*], which states:

"If the Buyer finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Seller by telephone and confirmed in writing. The Seller shall then, at once elect either to:

"(1) agree with the Buyer upon an extension of the contract, or

"(2) sell out for the account of the Buyer, using due diligence, the defaulted portion of the contract; or

"(3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

If the Buyer fails to notify the Seller of his inability

to complete his contract, as provided above, the liability of the Buyer shall continue until the Seller, by the exercise of due diligence, can determine whether the Buyer has defaulted. In such case it shall then be the duty of the Seller, after giving notice to the Buyer to complete the contract, at once to:

"(1) agree with the Buyer upon an extension of the contract, or

"(2) sell out for the account of the Buyer, using due diligence, the defaulted portion of the contract; or

"(3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day."

The arbitrators determined that in accordance with NGFA Grain Trade Rule 28(B), the contracts in this case should have been priced out "*based on the close of the market the next business day.*" The arbitrators relied upon documentation

provided with the parties' arguments – specifically Document 8 in Central's first argument – as proof of market differentials in calculating the following award:

On the first load of 44,000 pounds under contract number 595/1012 cancelled in March:

Contract Price: \$33/cwt.
(-) March Pricing: \$29/cwt.
\$ 4 x 440 cwt. = \$1,760

On the first load of 44,000 pounds under contract number 611/1030 cancelled in March:

Contract Price: \$36/cwt.
(-) March Pricing: \$29/cwt.
\$ 7 x 440 cwt. = \$3,080

On the second load of 44,000 pounds under contract number 595/1012 cancelled in April:

Contract Price: \$33/cwt.
(-) April Pricing: \$28/cwt.
\$ 5 x 440 cwt. = \$2,200

Total = \$7,040

The Award

Thus, the arbitrators awarded the sum of \$7,040 to Central Distributing Co. Inc. from High Country Mercantile Inc., plus \$736.62, which represents interest from the dates of the contract cancellations (March 23 and April 8) to the date this case was submitted to the arbitrators (June 29, 2006) at a rate of 8.25 percent per annum.

Submitted with the unanimous consent of the arbitrators, whose names appear below:

Gerald Freudenthal, *Chair*

Manager
Oahe Grain Corp.
Onida, S.D.

Scott Dubbelde

General Manager
Farmers Cooperative Elevator Co.
Hanley Falls, Minn.

James Krogh

President
CHS Sunflower
Grandin, N.D.