



National Grain and Feed Association

Arbitration Decision

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March 16, 2006

Arbitration Case Number 2108

Plaintiff: The Andersons Inc., Maumee, Ohio

Defendants: Richard Storehalder and Storehalder Farms, Waldron, Mich.

Statement of the Case

This case involved a dispute over the alleged failure to deliver in fulfillment of various contracts entered into between The Andersons Inc. ("Andersons") and Richard Storehalder and Storehalder Farms (collectively, "Storehalder").

Andersons and Storehalder entered into contracts for the delivery of 40,000 bushels of soybeans and 35,000 bushels of corn in the 2003 crop year. Storehalder completed delivery on each of the corn contracts and on at least two of the soybean contracts. But Andersons claimed that Storehalder only partially delivered against a third soybean contract, and failed entirely to deliver against a fourth soybean contract. With respect to the third soybean contract (Andersons contract number 30797), Andersons alleged that Storehalder delivered 6,569.73 bushels of the agreed-upon quantity of 10,000 bushels. On the fourth soybean contract (Andersons contract number 31800), which also provided for delivery of 10,000 bushels, Andersons claimed that Storehalder made no deliveries. Delivery under the contracts in dispute was scheduled originally to occur in October-November 2003.

The parties subsequently communicated regarding these contracts on various occasions for several months. Andersons ultimately cancelled the contracts on May 11, 2004.

Both contracts 30797 and 31800 provided in item 5 under "Purchase Contract Terms," that the NGFA Grain Trade Rules applied and that any disputes arising out of the contracts would

be arbitrated by the NGFA. The contracts further stated in item 9:

"Seller's failure to perform on this Contract will result in contract cancellation charges to Seller, the total of which will be the difference between the Contract price and the replacement cost at the time of cancellation, plus a minimum cancellation charge of ten cents (10¢) per bushel. Seller shall also be liable for Buyer's attorney fees, costs of collection, plus interest."

Andersons filed this arbitration claim to recover \$64,093.73, which it said represented the difference between the \$10.35-per-bushel cost of replacing the 13,430.27 undelivered bushels on the date of cancellation and the contract prices (\$5.70-per-bushel for 3,430.27 undelivered bushels under contract 30797; \$5.67-per bushel for 10,000 undelivered bushels under contract 31800), plus a cancellation charge of 10-cents-per-bushel. Andersons also requested attorney fees of \$600.

Storehalder alleged that Andersons' cancellation of the contracts on May 11, 2004, was not justifiable because Storehalder still was attempting to "work this problem out" and because the contracts had been extended until May 31, 2004. Based upon a cancellation price applicable to that date, Storehalder maintained its liability would be limited to \$35,084.40.

The Decision

The arbitrators determined that NGFA Grain Trade Rule 28 was applicable to this case. NGFA Grain Trade Rule 28(B) [Buyer's Non-Performance] provides in its entirety as follows:

"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 examined closely the facts and arguments presented by the parties. The arbitrators noted the detailed accounts of phone conversations between Andersons and Storehalder. The arbitrators similarly reviewed a well-documented record of written correspondence from Andersons to Storehalder that addressed the issues in dispute and suggested options for the parties to resolve their differences while preserving their agreement.

The arbitrators observed that Storehalder's main objection asserted in its arguments was that the calculations of the amounts due were incorrect because the contracts had been extended until May 31, 2004. However, the arbitrators deter-

mined that, pursuant to NGFA Grain Trade Rule 28, Andersons had the duty to act "at once" to cancel the contracts upon realizing that Storehalder would not perform under the contracts. Therefore, the arbitrators concluded that the appropriate action for Andersons was to cancel the contracts as of May 11, 2004, the soonest date it became aware that Storehalder would not deliver against the contracts, instead of waiting until the end of the extended contract period, as suggested by Storehalder.

The arbitrators determined that Andersons' exercise of due diligence was more than fair in its determination of whether Storehalder was going to deliver soybeans in fulfillment of the contracts. The arbitrators considered the argument presented by Storehalder that Andersons cancelled the contracts despite indications that Storehalder intended to "work this problem out" and eventually deliver against the contracts. The arbitrators noted that the contracts were extended from November 2003 into the May 2004 period. Because a period of almost six months ultimately passed from the time shipment under the contracts was first due until Andersons cancelled the contracts, the arbitrators concluded that this was more than sufficient opportunity for the contracts to be completed. The arbitrators further noted that Andersons first exhausted another option available to it under NGFA Grain Trade Rule 28 by extending the contracts to a later delivery period before ultimately canceling the contracts after exercising due diligence to determine that Storehalder was not going to deliver against the contracts.

Upon concluding that Andersons followed proper procedures and was entitled to cancel the contracts, the arbitrators focused upon determining whether Andersons had calculated the amounts due accurately. Following an extensive review of the facts presented by the parties in this case and verification of the closing Chicago Board of Trade (CBOT) prices that applied to the dates in dispute, the arbitrators determined that Andersons had accurately and fairly calculated the amounts owed by Storehalder for not delivering against the contracts.

The arbitrators next considered Andersons' request for reimbursement of \$600 for legal fees under item 9 of the "Purchase Contract Terms" in the contracts. The arbitrators decided that this request was fair and reasonable, and likely far less than what a party under these circumstances would be expected to incur.

Therefore, the arbitrators ruled in favor of Andersons.

The Award

The arbitrators, therefore, ordered that Richard Storehalder and Storehalder Farms pay the amount of \$64,693.73 to The Andersons Inc.

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

Keith D. Swigart, *Chair*

Manager

Minier Cooperative Grain Co.

Minier, Ill.

Chad Nagel

Manager of Trading

Wye Mills Grain

Wye Mills, Md.

James Rogers

Grain Merchandiser

LaSalle Farmers Grain Co.

Madelia, Minn.