



National Grain and Feed Association

Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

April 12, 2006

Arbitration Case Number 2129

Plaintiff: Cornbelt Grain Co. Inc., Kansas City, Mo.

Defendant: Commodity Specialists Co., Overland Park, Kan.

Statement of the Case

This case involved grain discounts that Cornbelt Grain Co. Inc. (Cornbelt) alleged it was owed by Commodity Specialists Co. (CSC) resulting from the purchase of corn and wheat from Farmland Industries (Farmland) dating to 2000.

The arbitrators observed that the parties presented extensive and varying documentation and information regarding collection of the disputed grain discounts. Scale tickets, invoices, affidavits and various other miscellaneous items were submitted by the parties in the case. The arbitrators noted that the most recent disputed invoice contained in the record was dated April 11, 2001, and that the record reflected that CSC made no payments after this date.

The arbitrators determined that at issue in this case was whether Cornbelt's claim was time-barred. Cornbelt was acting on behalf of Farmland, which declared bankruptcy on May 31,

2002 (and subsequently became known as Reorganized FLI Inc.). Cornbelt's authority to act on behalf of Farmland for certain purposes arose from a letter agreement between Cornbelt and Farmland dated May 29, 2003. For purposes of this case, the relevant part of the letter agreement provided as follows:

"Grain Discounts: Cornbelt will undertake to audit and review Farmland documentation and records to discover and collect currently unidentified grain discounts from transaction settlements (both taken and paid) owed to Farmland. In exchange for this work, Farmland will remit sixty percent (60%) of such collected receivables to Cornbelt. Cornbelt will bear the cost of labor and expenses for such efforts."

On Dec. 19, 2004, Farmland, acting through Cornbelt, sued CSC in Johnson County, Kansas district court. On April 4, 2005, the judge ordered the case submitted to NGFA arbitration.

The Decision

It was the collective judgment of the arbitrators that Cornbelt attempted to bring an expired claim on Farmland's behalf.

The arbitrators determined that the original claim arose when both Farmland and CSC were members of the NGFA. Under Section 3(d) of the NGFA's Arbitration Rules, a dispute between members is required to be filed for arbitration within 12 months after the claim arises, or it is considered untimely and ineligible for arbitration. The arbitrators concluded that when Cornbelt entered its letter agreement with Farmland on May 29, 2003, it could take no greater rights than those that belonged to Farmland. In support of this conclusion, the arbitrators noted a state of Missouri statutory provision (Mo. Rev. Stat. 400-

009.404(a)(1)) and a decision by the State of Kansas Court of Appeals (*OXY USA Inc. v. Colorado Interstate Gas Co.*, 20 Kansas.App.2d 69, 78-79 (1994)). Because more than 12 months had elapsed since the most recent disputed invoice, and because Cornbelt possessed no greater rights than those belonging to Farmland, it was the opinion of the arbitrators that Cornbelt brought an expired claim on behalf of Farmland to the court system in 2004, which exceeded the time permitted for NGFA arbitration.

At this point, the 12-month rule under Section 3(d) of the NGFA Arbitration Rules for filing a claim for arbitration clearly would have applied. The arbitrators determined that Cornbelt

was attempting to bring an expired claim to the court system in 2004, which exceeded the time permitted for NGFA arbitration.

The arbitrators were not persuaded by Cornbelt's contention that a different standard should apply because it was a non-member. First, the record reflected that Cornbelt's only rights were to pursue collection on behalf of Farmland. As stated previously, Farmland had an expired claim before enter-

ing into its letter agreement with Cornbelt. Second, the record was not clear on how the state court case was initiated in Farmland's name, and subsequently was ordered to NGFA arbitration in Cornbelt's name. Based upon the information presented in this case, the arbitrators determined that no evidence in the record gave Cornbelt the right to pursue Farmland's claim in Cornbelt's own name, and in a manner that would enable Cornbelt to recover on a claim that otherwise had expired under the NGFA Arbitration Rules.

The Award

Therefore, the arbitrators denied the claim for damages by Cornbelt in its entirety.

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

Donald W. Wenneker, *Chair*
Director of Procurement
Tate and Lyle Ingredients Americas Inc.
Decatur, Ill.

Todd Lafferty
Vice President and General Counsel
Wheeler Brothers Grain Co.
Watonga, Okla.

Christopher Putnam
Senior Attorney
Cargill Inc.
Minneapolis, Minn.