



**National Grain and Feed Association**

# Arbitration Decision

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September 9, 2010

## Arbitration Case Number 2298

**Plaintiff: Riceland Foods, Inc., Stuttgart, Ark.**

**Defendant: Kris Baker Farming Company, Sherrill, Ark.**

### Statement of the Case

On May 5, 2006, the defendant sold the plaintiff 10,000 bushels of U.S. No. 2, soft red winter wheat. The contract number was HA 367041. The delivery destination was stated as Stuttgart Grain Drier. The delivery period was June/July 2007. A futures price of \$4.27 per bushel was established, but no basis was stated. The contract was signed by both parties.

On May 12, 2006, the defendant sold the plaintiff 2,500 bushels of U.S. No. 2, soft red winter wheat. The contract number was HA 367056. The delivery destination was stated as Stuttgart Grain Drier. The delivery period was June/July 2007. A futures price of \$4.54 per bushel was established, but no basis was stated. The contract was signed by both parties.

The dispute in this case had three issues. 1) The contracts clearly stated a delivery destination of Stuttgart Grain Drier. However, the defendant claimed that was not a normal destination per past practices between the parties. 2) The defendant questioned the specified destination and claimed that it could not deliver to the contracted destination without additional compensation. The plaintiff claimed to have copies of the contracts signed by both parties, and said it neither was willing to provide additional compensation for the contracted destination nor to change the destination. 3) The defendant claimed it was relieved of its contractual obligation prior to the delivery period. The plaintiff stated the contracts still were in effect, and that it did not receive notice from the defendant that the defendant wanted to cancel the contracts.

### The Decision

Contracts HA 367041 and HA 367056 clearly state that Stuttgart Grain Drier was the delivery destination. The contracts were entered into on May 5 and May 12, 2006, respectively. Based upon the evidence presented, the contracts were signed by both parties and the defendant did not attempt to question the terms of the contracts until October 20, 2006. The defendant signed the contract and failed to respond within 10 days (as required under the contract) with any dispute of the contract terms. As a result, pursuant to the terms of the contract and NGFA Grain Trade Rule 3(A) and (B), the defendant was obligated to perform and deliver under the terms of the contract. Past practices do not make for contractual terms; the contract itself prevails.

At no time, was there a written agreement to cancel the contracts. The plaintiff acted per the terms of their contracts. It was not

under obligation to grant relief or excuse the defendant from the contracts. The defendant assumed that the matter had been resolved and the contracts canceled. However, the defendant did not produce a written agreement to cancellation or show where the plaintiff accepted the terms of cancellation. NGFA Grain Trade Rule 4 states that both parties must agree to alter a contract and it must be made in writing. The plaintiff never agreed, according to the facts presented in this case, as to cancellation. Rule 28 of the NGFA Grain Trade Rules also states that the seller must give notice of failure to perform both verbally and in writing. The defendant made no written notice. Also, per the terms of the contracts and NGFA Grain Trade Rules, the plaintiff was not obligated to excuse the defendant of contract performance. The defendant and plaintiff, per the contracts, were to agree to cancellation terms, but no written

agreement of cancellation was produced, except those by the plaintiff, per contract terms, at the time the defendant failed to perform on the contracts.

NGFA Grain Trade Rule 28 also states that the seller must provide notice of failure to perform both verbally and in writing. The defendant provided no such written notice. Also, per the

terms of the contracts and NGFA Grain Trade Rules, the plaintiff was not obligated to excuse the defendant of contract performance. The defendant and plaintiff, per the contracts, were to agree to cancellation terms, but no written agreement of cancellation was produced, except those by the plaintiff, per contract terms, at the time the defendant failed to perform on the contracts.

## The Award

The cash award is based solely on futures. There was some confusion in documents presented as to cancellation calculations. However, based upon the contract, the fact that there was no basis stated, the arbitrators used futures values and related them to the appropriate delivery period.

### Futures Only:

Original	#367041	10,000	@	\$4.27	=	\$42,700.00
Buy Back		10,000	@	\$7.515	=	\$75,150.00
						\$32,450.00

Original	#367056	2,500	@	\$4.54	=	\$11,350.00
Buy Back		2,500	@	\$7.515	=	\$18,787.50
						\$7,437.50

### 5 Percent Default Penalty:

#367041	\$42,700	*	5%	=	\$2,135.00
#367056	\$11,350	*	5%	=	\$567.50
					\$2,702.50

**Total Due Riceland for Contract Default = \$42,590.00**

The arbitrators also awarded interest at a rate of 5 percent per annum pursuant to NGFA Arbitration Rule 8(m), to begin to accrue on the date of the decision until judgment is paid.

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

### **Bruce Sutherland, Chair**

Vice President  
Michigan Agricultural Commodities Inc.  
Lansing, Mich.

### **Amy N. Brammer**

Business Development Manager  
Topflight Grain Cooperative  
Bement, Ill.

### **Casey Potter**

Grain Marketing Manager  
Farmers Cooperative Company  
Ames, Iowa