



National Grain and Feed Association

Arbitration Decision

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April 22, 2010

Arbitration Case Number 2344

Plaintiff: Markit County Grain LLC, Argyle, Minn.

Defendant: Thomas Anderson, Grafton, N.D.

Statement of the Case

Markit County Grain (“Markit”) alleged entering into purchase contract number 1526 with Thomas Anderson (“Anderson”) on July 13, 2007, for 20,000 bushels of U.S. No. 1 hard spring wheat at a cash price of \$6.10 per bushel for delivery between Nov. 15, 2007 and Dec. 15, 2007.

Markit also alleged the parties entered into a second purchase contract (number 1636) on Sept. 5, 2007, for 3,500 bushels of hard spring wheat at a cash price of \$7.26 per bushel for delivery

between Feb. 15, 2008 and March 15, 2008.

The dispute arose after Anderson denied entering into either of the contracts. Anderson stated that he merely had made an inquiry as to price and had requested the contracting materials for informational purposes only. Markit, on the other hand, stated its expectations were that it had entered into legitimate cash grain contracts with Anderson.

The Decision

The arbitrators concluded that the documents and evidence provided by the parties established that they had entered into oral agreements, which were followed by written confirmations sent from Markit to Anderson pursuant to trade custom and the NGFA Trade Rules.

During the specified delivery periods, Markit placed numerous calls to Anderson inquiring about deliveries under the contracts. Markit alleged that, at first, Anderson confirmed his commitment to honoring the contracts by shipping the bushels as stated. Subsequent phone calls between the parties, even after the original shipping periods, demonstrated the same expectations that the contracted bushels still would be delivered. According to Markit, on Jan. 17, 2008, Anderson stated he would not confirm the contracts and would not be shipping the grain.

The arbitrators concluded that based upon the evidence and submissions provided, Markit acted consistently and in accordance with the contracts terms, the NGFA Trade Rules and trade custom. NGFA Grain Trade Rule 1 [Trade] provides for oral

agreements, which the evidence indicates were entered into between the parties on the dates stated above. In addition, NGFA Grain Trade Rule 3 [Confirmation of Contracts] provides for the exchange of written confirmations between parties to a trade. As provided in the rule, if one party fails to provide a written confirmation, the confirmation provided by the other party is binding.

Anderson denied both contracts and claimed he only wanted to see the terms and conditions of the contracts. The arbitrators concluded, however, that such a course of conduct would be inconsistent with trade practice. With respect to his own prior dealings and customary practice, Anderson claimed as follows:

“In short, I do not pre-sell my grain, my common practice is to leave it on my farm in on site storage until the price on the board is sufficient. At that point in time I haul my grain with my own truck and collect the money that is due to me at that point.” [Anderson’s affidavit, page 3.]

The arbitrators noted, however, that Markit produced evidence that demonstrated Anderson's use of and familiarity with contracting procedures and terms for future grain deliveries on prior occasions (e.g., purchase contract number F 145, Exhibit K, Markit's Rebuttal). The arbitrators further noted that Anderson was inconsistent in statements made in this arbitration case and in a lawsuit filed in the Minnesota state court.

Anderson received and was aware of the terms of the contracts, yet he failed to follow the NGFA Trade Rules, trade custom or the language of the contract by informing Markit in writing of any discrepancies. Pursuant to NGFA Grain Trade Rule 4 [Alteration of Contract], both parties are to agree to any changes to or alteration of a contract. Instead, Anderson unilaterally dismissed the contracts. The arbitrators noted that Anderson also commented on the upward movement of market prices for the commodities that had been contracted. The

arbitrators determined that this, too, did not provide sufficient reason to subsequently dismiss or fail to perform on the agreements between the parties.

For these reasons, the arbitrators found in favor of Markit and determined that it was owed the market differences and interest on the unshipped contracts.

With respect to Markit's calculation of alleged damages, however, the arbitrators noted that NGFA Grain Trade Rule 28(A)(3) [Seller's Non-Performance] requires due diligence by the buyer in determining non-performance by the seller. On Jan. 17, 2008, a telephone conversation occurred between the parties in which Anderson informed Markit that he would not be performing on the contracts. Based upon this admission from Anderson, the arbitrators determined that Markit should have canceled both contracts on that same day.

The Award

The arbitrators assessed damages as follows:

Contract Number 1526:

Contract cash value: \$6.10
Cancellation cash value: 14.38
Market difference of \$8.28/bu. x 20,000 bu. = \$165,600

Contract Number 1636:

Contract cash value: \$7.26
Cancellation cash value: 14.38
Market difference of \$7.12/bu. x 3,500 bu. = \$24,920

Total contract difference due Markit = \$190,520

The arbitrators further determined that Markit was due interest based upon NGFA Arbitration Rule 8 (m) at the rate of 5 percent from the date of cancellation (Jan. 17, 2008) to the date of this decision.

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