



National Grain and Feed Association

Arbitration Decision

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December 3, 2009

Arbitration Case Number 2244

Plaintiff: StateLine Cooperative, Burt, Iowa

Defendant: Kollasch Land & Livestock Inc., Algona, Iowa

Statement of the Case

StateLine Cooperative (StateLine) sought \$191,967.29 from Kollasch Land & Livestock Inc. (Kollasch) for damages suffered from futures losses, commission fees, cancellation fees and interest surrounding the cancellation of a series of “futures first contracts” (a/k/a “hedge-to-arrive”) entered into between January 2007 and June 2007.

StateLine entered into a series of 17 separate “futures first contracts” with Kollasch from January to June of 2007 for a total of 1,050,000 bushels of corn to be delivered to StateLine’s North Burt, Iowa, elevator. These contracts were negotiated and signed by both representatives of StateLine and Charlie Kollasch, president of Kollasch. Each contract had a defined shipment period. StateLine sold corn futures on the Chicago Board of Trade to hedge fully each of these contracts.

Upon request and agreement between Kollasch and StateLine, each contract later was amended to allow Kollasch to deliver the corn to another StateLine location. The specific language contained in letters from StateLine to Kollasch from March through June 2007 stated:

“I want to confirm our mutual agreement that we will be giving you additional flexibility on the Futures First contract listed above. You shall be allowed to switch the delivery location to another StateLine location at no charge. Delivery of this grain to a non StateLine Cooperative destination will be charged a service fee up to \$0.06 per bushel. All other terms and conditions in the contract will apply as stated in the Futures First Contracts.”

In addition, several of these amendments, though not all, included a clause that stated:

“Any cancellation of these contracts must be completed no later than three months prior to the Delivery Period stated on the contract. Contract cancellations will be settled using the market

difference of the futures purchased to offset the existing short futures position plus a \$0.06 per bushel service charge.”

These amendments were sent by StateLine and then signed by Charlie Kollasch.

Kollasch subsequently approached StateLine seeking assistance to help it limit its market exposure during a time of rising futures prices. StateLine suggested cancelling a portion of the contracts and applying any market value to the remaining contracts. On Sept. 24, 2007, Kollasch requested the termination of all contracts. StateLine bought back futures for all 17 contracts, incurring a market loss of \$97,867.49. StateLine also incurred brokerage commissions of \$6,060.60. Total costs incurred by StateLine were \$103,928.09.

These figures were not debated by Kollasch. StateLine sent invoice no. 87985 for \$103,928.09 to Kollasch on Sept. 28, 2007, with a due date of Oct. 20. StateLine sent a letter to Kollasch on Sept. 25, 2007, to summarize their transactions, which included the following passage:

“Kollasch Land and Livestock will need to pay StateLine \$103,928.09 for these transactions. I did not charge any type of service fee for the contracts even though we had agreed to a \$0.06 charge in the event of non-delivery cancellations. A \$0.06 service fee could have totaled \$63,000. The only thing StateLine is billing you for is the actual market loss of the contract futures positions and the cost of brokerage commissions and exchange fees.”

StateLine claimed it charged 1.5 percent interest per month on all past-due accounts. While neither StateLine’s contracts nor the letter dated Sept. 25, 2007 addressed the issue of interest, StateLine’s invoice clearly stated the following: “A **FINANCE CHARGE** of 1 ½% (which is **18% ANNUAL**) will be assessed after the **20th** of the month. Credit cut off after **60 days**”. (Emphasis in original.)

StateLine sought damages as follows:

1. Buy Back Loss:	\$97,867.49
2. Commission Fees:	\$ 6,060.60
3. Cancellation Fees:	\$63,000.00
4. Accrued Interest on Buy-Back Commissions:	\$15,589.20
5. Interest on Cancellation Fees:	\$ 9,450.00
Total:	\$191,967.29

Kollasch agreed that the facts in this case largely were undisputed. Kollasch did not agree, however, that any discussion was had, or agreement made, allowing for a \$0.06 per bushel cancellation fee if these contracts were not delivered upon. Only two of the 12 amendment letters contained such language, although Kollasch did sign the letters containing the clauses.

Kollasch further claimed that such fees were unlawful under Iowa law. Additionally, as confirmed by StateLine, Kollasch stated it was StateLine that originally suggested a cancellation process when Kollasch inquired about ways to limit its risk. Kollasch argued this combination of circumstances illustrated a scenario whereby both parties agreed to amend the original contracts providing for them to be cancelled and damages settled between the two parties. According to Kollasch, its actions consequently did not constitute a breach of contract, as claimed by StateLine, and, therefore, the agreement would not allow for the cancellation fees claimed.

Finally, Kollasch argued that it was not obligated to pay interest on StateLine's invoice as it was not mentioned in any of the documents executed between the two parties.

The Decision

The arbitrators determined that the bulk of the facts surrounding this case were not in question. Both StateLine and Kollasch agreed that the account losses of \$93,867.49 and commission fees of \$6,060.60—totaling \$103,928.09—were due to StateLine by Kollasch.

The arbitrators then had to determine whether the contract amendments were agreed upon to include the cancellation fees of \$0.06 per bushel, and the further question regarding interest, both the rate and at what point interest charges were to begin.

The arbitrators found that the agreement for a cancellation fee of \$0.06 was discussed and agreed to by both parties, as stated in correspondence from StateLine to Kollasch. The fact that the first two of the 12 amendment letters contained language about the cancellation fee, which Kollasch reviewed and signed, demonstrated knowledge of this discussion. However, as stated in StateLine's own contract, "[t]he parties may amend this contract by a document signed by both parties and in no other manner."

These terms caused the arbitrators to rule that this clause was only enforceable on the bushels contained in those two contracts, and not in all 17 contracts with Kollasch. The arbitrators also concluded that the Sept. 25, 2007 letter to Kollasch in effect waived these fees in writing, and that, therefore, StateLine could not then claim at a later date that these charges were collectable.

Regarding interest on the outstanding invoice due StateLine, the arbitrators concluded that there was no evidence that any language discussed this point on either the contracts or the series of letters and emails between the parties. It is, however, recognized that as a matter of common trade practice, interest is charged in the normal course of business on past-due accounts. The arbitrators also noted that StateLine's invoice specifically stated that interest charges would accrue. The arbitrators concluded that the annual interest rate of 18 percent (stated in the invoice) was unreasonable and would be disputed by any reputable firm whose account went past due with StateLine. NGFA Arbitration Rule 8(m) states as follows:

"The National Arbitration Committee and/or the Arbitration Appeals Committee may include an amount of interest in an award. If interest is awarded, unless otherwise provided by agreement between the parties, the applicable rate of interest shall be the Prime Rate as published in the *Wall Street Journal* on the date the case was filed. (*Emphasis in original.*)"

The prime rate was 5.25 percent on April 9, 2008, as published in the *Wall Street Journal*. The arbitrators also granted an interest start date that coincided with the stated term of the invoice, or Oct. 21, 2007. Kollasch was directed to pay a reasonable interest rate of 5.25 percent from the date its account became past due, in accordance with the policy indicated by StateLine as part of the basis of the transactions between the two parties.

The Award

The arbitrators awarded StateLine the sum of \$103,928.09, plus interest at the rate of 5.25 percent from Oct. 21, 2007 until the invoice is paid in full.

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

Michael J. Carmichael, *Chair*
Senior Trader
Bunge North America Inc.
St. Louis, Mo.

Randy K. Broady
Grain Originations Manager
Advanced Agri-Solutions Co-op Inc.
Botkins, Ohio

Harold W. Clark
Manager
Hillsdale Elevator Co.
Hillsdale, Ill.