



National Grain and Feed Association

Arbitration Decision

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April 15, 2004

Arbitration Case Number 2029

Plaintiff: Cooperative Marketing Alliance, Memphis, Tenn.

Defendant: Meco Inc., Johnstown, Neb.

Arbitration Case Number 2030

Plaintiff: Cooperative Marketing Alliance, Memphis, Tenn.

Defendant: Hejco Inc., Johnstown, Neb.

Statement of the Case

This case was a consolidation of two separate claims: Cooperative Marketing Alliance v. Meco Inc. and Cooperative Marketing Alliance v. Hejco Inc. Both claims involved marketing agreements for the sale and delivery of grain to Cooperative Marketing Alliance (“CoMark”). The sellers in each claim – Meco Inc. and Hejco Inc. (collectively, the “sellers”) – shared the same principal. CoMark and the sellers agreed to consolidate these claims because the facts and issues in dispute were substantially identical.

CoMark’s claims against the sellers were based upon agreements for the July 31, 2001 and July 31, 2002 sale and delivery of corn and soybeans. As the result of the sellers’ alleged failure to deliver under the agreements, CoMark claimed total damages of \$14,256.54. CoMark alleged that Meco failed to deliver 50,000 bushels of 2000-crop corn and 50,000 bushels of 2001-crop corn, resulting in damages to CoMark of \$2,686.80 for the 2000 crop and \$4,784.94 for the 2001 crop (totaling \$7,471.74 claimed against Meco). In addition, according to CoMark, Hejco failed to deliver 50,000 bushels of 2000-crop corn and 50,000 bushels of 2001-crop corn, resulting in damages to CoMark of \$1,999.86 for the 2000 crop and \$4,784.94 for the 2001 crop (totaling \$6,784.80 against Hejco).

In support of its claim, CoMark produced various documents, including a statement from its account manager. This

statement conveyed CoMark’s version of the events and dealings between the parties that preceded this dispute, including the alleged quantities of grain committed by the sellers and lack of performance or physical delivery; the protocols whereby crops were applied to the contracts and proceeds were allocated; and the numerous communications between the parties during their course of business.

However, the sellers denied owing any money to CoMark. The sellers also counterclaimed against CoMark for \$9,772.15 related to the 2000-crop corn contracts entered into between the parties in February 2000. The sellers’ counterclaims were based upon discussions with CoMark’s representative, who allegedly established a sale price and profit to which the sellers subsequently became entitled. The sellers also claimed that CoMark’s misrepresentations concerning the profit on the 2000-crop corn induced them to enter into the subsequent contracts. The sellers argued that CoMark’s misrepresentations justified the rescission of the subsequent contracts.

The sellers contended that their principal met in September 2000 with CoMark’s representative, and they discussed a 36-cent-per-bushel profit that was available above the market rate. The sellers claimed that their principal confirmed with CoMark’s representative that this opportunity was then available and allegedly stated to the CoMark representative, “36 cents sounds great to me. I’m satisfied with that. I want out of

it now.” According to the sellers, CoMark’s representative then responded, “That’s fine, if you want out now at that rate, I’ll make it happen for you.” The sellers claimed that Johnson relied upon these statements when consequently committing additional bushels of corn, based upon the understanding that

they would receive a profit of 36 cents per bushel. Instead, the sellers received 28.35 cents per bushel, and counterclaimed for the difference of 7.65 cents per bushel (totaling \$7,654.97 for 100,065 bushels). The sellers also claimed that CoMark owed to sellers a “held \$ credit” of \$2,117.25.

The Decision

The arbitrators closely reviewed the arguments and documentation submitted by the parties. After careful consideration of the documentation provided and the relevant business practices and customs of the trade, the arbitrators determined that CoMark had fulfilled its obligations regarding the “held credit” of \$2,117.25.

However, the arbitrators found that CoMark was bound to the commitments made by its account manager regarding a price and profit of 36 cents per bushel for the 2000-crop contracts. The arbitrators decided that subsequent verbal commitments were as important as the written contract. Further, the arbitrators determined that the subsequent contracts were enforceable through April 10, 2001, when the

sellers’ principal advised CoMark that the sellers were terminating their business relationship and would be making no additional deliveries on the contracts. The arbitrators determined that, upon receiving such notification, CoMark should have cancelled the outstanding contracts and detailed hedging gains or losses and monies exchanged with the sellers.

The arbitrators concluded that support for CoMark’s claims on the subsequent damages was insufficient, confusing and unclear to substantiate CoMark’s alleged damages. Because the documentation provided by CoMark was inconsistent and unverifiable, the arbitrators were unable to determine damages in favor of CoMark on the subsequent contracts.

The Award

The arbitrators awarded to Mecos Inc. and Hejco Inc. the difference between the 36-cents-per-bushel commitment and the 28.35 cents per bushel that had already been paid, resulting in a total award amount of \$7,654.97 due to the sellers. The arbitrators denied CoMark’s claims for damages.

Submitted with the unanimous consent and approval of the arbitrators, whose names are listed below:

Dave Hastings, *Chairperson*
Manager
Ludlow Co-op Elevator Co.
Ludlow, Ill.

John Dole
Manager of Market Research
Central States Enterprises Inc.
Heathrow, Fla.

Gary Webster
Grain Division Manager
Impact LLC
Frankfort, Ind.

Arbitration Appeals Case Number 2029

Appellant: Cooperative Marketing Alliance, Memphis, Tenn.

Appellees: Meco Inc., Johnstown, Neb.

Arbitration Appeals Case Number 2030

Appellant: Cooperative Marketing Alliance, Memphis, Tenn.

Appellees: Hejco Inc., Johnstown, Neb.

Statement of the Case

The Arbitration Appeals Committee, individually and collectively, reviewed all evidence submitted in the cases. It also reviewed the finding of the original arbitration committee.

Cooperative Marketing Alliance (CoMark), and Meco Inc. (Meco) and Hejco Inc. (Hejco) had entered into a series of marketing agreements involving corn and soybeans. These marketing agreements operated as commodity pools.

Subsequently, a number of these agreements were breached and never delivered upon.

The central question of this arbitration was whether any of the parties were owed documented damages.

The Decision

While three parties had entered into several marketing agreements for corn and soybeans, some of the agreements were not signed and none contained any reference to National Grain and Feed Association (NGFA) Trade Rules. Thus, the Arbitration Appeals Committee ruled that NGFA Trade Rules were not applicable in this case.

[Note: NGFA Arbitration Rule 3(c) provides general rules of contract interpretation pursuant to application of the NGFA Trade Rules in arbitration cases. Specifically, under Arbitration Rule 3(c)(3), in certain circumstances if a contract provides for NGFA arbitration but does not also reference the NGFA Trade Rules, it "shall be presumed to intend NGFA arbitration without reliance on the NGFA Trade Rules." The Arbitration Appeals Committee determined that was the circumstance in this case.]

All the agreements contained language specifically prohibiting verbal modifications of the agreements. Yet all of the parties agreed there were attempted or actual modifications made verbally relative to the agreements, with no written verification or documentation of changes.

In September 2000, all the involved parties, as well as a number of individuals, attended a meeting at Grand Island, Neb. At this meeting, CoMark shared information on the operation of one of the pools. Part of the information shared was an update on pool profits amounting to 36 cents per bushel. Meco and Hejco believed they could lock in this 36-cent level. This Arbitration Appeals Committee believes that CoMark was reporting on the current status of the pool, and not on the final results. The written language in the marketing agreements submitted by both parties states: "[t]he purchase price for

crops shall be determined at the time the marketing pool is closed.” Therefore, the Arbitration Appeals Committee believes the 36-cent price level was only an interim indication, and not the final price.

Due to the question of not receiving the expected price level and subsequent monetary payments in settlement of earlier agreements, Meco and Hejco did not perform on some later marketing agreements (2000 S, 2001 C, 2001 D) calling for delivery of corn.

CoMark sought damages relative to the unfilled marketing agreements. While CoMark had its auditor, Stafford and Associates, document the damages incurred, the information was never submitted as part of these arbitration proceedings.

Similarly, Meco and Hejco sought damages relative to a potential underpayment on an earlier marketing agreement that had been performed upon. Documentation of such damages was inconsistent and insufficient.

The Award

Thus, the Arbitration Appeals Committee denied all claims of the appellant, Cooperative Marketing Alliance, and the appellees, Meco, Inc. and Hejco, Inc. Therefore, no monetary amounts were awarded to any of the parties.

Submitted with the unanimous consent and approval of the Arbitration Appeals Committee, whose names are listed below:

John McClenathan, *Chair*
Archer Daniels Midland Co.
Decatur, Ill.

Steve Colthurst
Land O Lakes Feed
Bellevue, Wash.

Edward P. Milbank
Milbank Mills Inc.
Chillicothe, Mo.

Daniel W. Walski
Luckey Farmers Inc.
Woodville, Ohio

Donald W. Wenneker
A.E. Staley Manufacturing Co.
Decatur, Ill.