



National Grain and Feed Association Arbitration Decision

www.ngfa.org | www.ngfa.org/decisions

1400 Crystal Drive, Suite 260
Arlington, VA 22202

P: (202) 289-0873
F: (202) 289-5388

January 6, 2023

CASE NUMBER 2908

PLAINTIFF: CORNETTE FARM SUPPLY, INC.
CHAMPAIGN, IL

DEFENDANT: FURST-MCNESS COMPANY
CHAMPAIGN, IL

STATEMENT OF THE CASE

This case involved Cornette Farm Supply, Inc. of Madison, WI (Cornette) and Furst-McNess Company of Freeport, IL (Furst-McNess). The circumstances involved negotiations for the possible purchase of canola meal. The transaction at the heart of the matter was a purported verbal contract on, or about, September 24 or 25, 2020. Cornette claims to have made a verbal contract with Furst-McNess to purchase 1,400 tons per month of canola meal for shipment between October 2020 and September 2021, at a price of \$255 per ton. Furst-McNess denies the existence of any contract between the parties. The nature of the dispute concerns the existence of a verbal contract.

Background:

The sequence of events leading up to the disagreement was a series of telephone calls, followed by emails and text messages. Both parties acknowledge that conversations about a possible sale of canola meal occurred between September 23 and September 25, 2020. The first documented written message regarding these discussions was an email sent by Michael Cornette (Cornette) to Glenn Zupke (Furst-McNess) at 1:12 PM Central Time, September 25, 2020. A copy of the email, which was submitted by both parties in this case, stated as follows:

"Glenn, Just sending a note. We bid \$240.00 per ton for canola loaded on trucks FOB Fox River Green Bay. The seller told you no they couldn't do it at that price they (you) came back with a price of \$258.00 for 10 cars and \$255.00 per ton for 13 cars or more. It was a verbal commitment. We have these tons sold. How do we proceed? Thanks, Mike"

Furst-McNess submitted a copy of a text message reply sent to Cornette, time stamped 3:57PM Central Time, September 25, 2020, which stated:

"Mike No confirmation on canola Going to be Monday now. I do apologize for delays but dealing with traders who quit at noon on Fridays I will get after on Monday early. Have a great weekend"

The responding text message from Cornette, time stamped 4:02PM Central Time, September 25, 2020, stated: "Thanks"

Cornette argues that the voice telephone negotiations resulted in a verbal contract. Cornette claims the contract was confirmed via Mr. Cornette's email and that the contract is further evidenced by additional actions Cornette claims to have taken involving hedging and the sale of canola meal to another party. Cornette seeks damages totaling \$744,660 related to cash and futures trading losses.

Furst-McNess disputes that the voice telephone negotiations resulted in a contract. Furst-McNess argues that neither party sent a trade confirmation to the other in accordance with NGFA Feed Trade Rule 3. According to Furst-McNess, Cornette acted prematurely in taking the additional actions claimed that related to hedging and sale of canola meal to a third party after the telephone discussions between Furst-McNess and Cornette. Furst-McNess asks that no damages be awarded to Cornette, and Furst-McNess presents a counter-claim for attorney fees and costs of arbitration including the NGFA arbitration service fee, totaling \$11,169.90.

THE DECISION

The arbitration committee finds that no contract was reached between the parties. While both parties agree that negotiations took place, the committee concludes there is insufficient evidence that an agreement was formed. Neither party submitted a contract confirmation within 24 hours of the transaction in accordance with NGFA Feed Trade Rule 3. NGFA Feed Trade Rule 3(A) states as follows:

Both the Buyer and Seller shall send a written confirmation, each to the other, not later than the close of the business day following the date of trade, or an agreed amendment setting forth the specifications as agreed upon in the original articles of trade, or an agreed amendment. Upon receipt of said confirmation, the parties shall carefully check all specifications therein and, upon finding any differences, shall immediately notify the other party to the contract by rapid written communication, or by telephone confirmed by subsequent written communication.

Furst-McNess was clear in its immediate response to the Cornette email that "...*No confirmation on canola...*" existed. Cornette's immediate acknowledgement of "*Thanks*" to the clear rejection by Furst-McNess of Cornette's initial message demonstrates that no final agreement had been reached.

Hedging activity or additional sales transactions are not in themselves evidence of an underlying contract. Even if the committee were to consider that activity in this dispute, Cornette failed to provide evidence of such activity or evidence to substantiate alleged losses associated with said activity.

Therefore, the Committee finds in favor of the Defendant, Furst-McNess Company.

The committee further finds that based upon the facts of the case, the claims by Cornette are not so frivolous as to warrant the award of attorney fees or arbitration costs sought in the counter-claim by Furst-McNess.

No damages are awarded in this case.

The decision was unanimous.

THE AWARD

No damages are awarded in this case.

Decided: September 21, 2022

SUBMITTED WITH THE UNANIMOUS CONSENT OF THE ARBITRATORS, WHOSE NAMES APPEAR BELOW:

Kurt Haarman, Chair

Senior Vice President
Columbia Grain International LLC
Portland, OR

Corey Dencklau

VP & General Manager, Ingredients
The Gavilon Group, LLC
Covington, LA

Tyler Scifers

Senior Director of Grain
Grain Craft
Overland Park, KS