



National Grain and Feed Association
Arbitration Decision

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July 31, 2019

CASE NUMBER 2825

PLAINTIFF: **SCOTT KEACH**
 HENDERSON, KY

DEFENDANT: **GAVILON GRAIN, LLC**
 HENDERSON, KY

CASE NUMBER 2826

PLAINTIFF: **HAGAN BROTHERS FARMS/MIKE HAGAN**
 WAVERLY, KY

DEFENDANT: **GAVILON GRAIN, LLC**
 HENDERSON, KY

CASE NUMBER 2827

PLAINTIFF: **JENKINS FARMS/THOMAS E. JENKINS**
 ROBARDS, KY

DEFENDANT: **GAVILON GRAIN, LLC**
 HENDERSON, KY

STATEMENT OF THE CASE

These cases centered on the performance or lack thereof of various managed contracts. The plaintiffs allege Gavilon Grain, LLC (“Gavilon”) was irresponsible in the manner in which it marketed the soybeans enrolled in the “Producer’s Edge” contracts, which were agreed upon between the parties in these cases. These cases were presented and adjudicated jointly because they share a common defendant and identical claims.

In case no. 2825, Scott Keach entered into Producer’s Edge contract P142146 with Gavilon for the sale of 5,000 bushels of soybeans on December 30, 2015. This contract was for the purpose of selling new crop 2016 bushels for delivery during the 2016 harvest time, October 1 thru November 30, 2016. Mr. Keach entered into a second Producer’s Edge contract, P142150, on the same date for the purpose of selling 5,000 bushels of new crop 2017 bushels for delivery during the 2017 harvest time, October 1 thru November 30, 2017. Both contracts provided for “Rules to apply: NGFA”, and both contracts were signed by Mr. Keach and Gavilon. The bushels enrolled in these contracts were priced via the pricing

mechanism implemented by the individuals responsible for the management of the Producer's Edge contracts. Mr. Keach delivered the bushels that were sold utilizing the Producer's Edge contracts and accepted payment for those bushels.

In case no. 2826, Hagan Brothers Farms/Mike Hagan ("Hagan") entered into Producer's Edge contract P142056 with Gavilon for the sale of 5,000 bushels of soybeans on November 18, 2015. This contract was for the purpose of selling new crop 2016 bushels for delivery during the 2016 harvest time, October 1 thru November 30, 2016. Mr. Hagan entered into a second Producer's Edge contract, P142057, on the same date for the purpose of selling 10,000 bushels of new crop 2017 bushels for delivery during the 2017 harvest time, October 1 thru November 30, 2017. Both contracts provided for "Rules to apply: NGFA", and both contracts were signed by Mr. Hagan and Gavilon. The bushels enrolled in these contracts were priced via the pricing mechanism implemented by the individuals responsible for the management of the Producer's Edge contracts. Mr. Hagan delivered the bushels that were sold utilizing the Producer's Edge contracts and accepted payment for those bushels.

In case no. 2827, Jenkins Farms/Thomas E. Jenkins ("Jenkins") entered into Producer's Edge contract P142099 with Gavilon for the sale of 2,500 bushels of soybeans on December 10, 2015. This contract was for the purpose of selling new crop 2016 bushels for delivery during the 2016 harvest time, October 1 thru November 30, 2016. Mr. Jenkins entered into a second Producer's Edge contract, P142100, on the same date for the purpose of selling 2,500 bushels of new crop 2017 bushels for delivery during the 2017 harvest time, October 1 thru November 20, 2017. Jenkins entered into a third Producer's Edge contract P142103 with Gavilon for the sale of 2,500 bushels of soybeans on the same date. This contract was for the purpose of selling new crop 2016 bushels for delivery during the 2016 harvest time, October 1 thru November 30, 2016. Jenkins entered into a fourth contract, P142104, on the same date for the purpose of selling 2,500 bushels of new crop 2017 bushels for delivery during the 2017 harvest time, October 1 thru November 20, 2017. All contracts provided for "Rules to apply: NGFA" and all contracts and addendums were signed by representatives of Jenkins Farms and Gavilon. The bushels enrolled in these contracts were priced via the pricing mechanism implemented by the individuals responsible for the management of the Producer's Edge contracts. Mr. Jenkins delivered the bushels that were sold utilizing the Producer's Edge contracts and accepted payment for those bushels.

The plaintiffs subsequently filed for arbitration arguing that Gavilon should be held fiscally responsible for the poor performance of the soybean pricing model that was utilized in the Producer's Edge contracts. The plaintiffs claim the contracts failed to achieve a "competitive price" and specifically request that the arbitrators review their claims to determine if "Gavilon acted with responsibility toward our interest and consider any liability they might have to us."

According to the plaintiffs, the contracts severely underperformed and the pricing approach applied was reckless and grossly negligent. The plaintiffs state their November 2016 Producer's Edge contracts closed at \$8.26 whereas the applicable futures market price reached at minimum \$11.60; and their two-year November 2017 Producer's Edge contracts closed at \$7.66 whereas the applicable futures market price reached at minimum \$10.50.

Gavilon argues it was not contractually required to obtain particular price levels, which in 20-20 hindsight would have been more favorable. Gavilon denies liability for the plaintiffs' claims based upon the terms of the agreements between the parties.

Gavilon states the contracts included addendums, which specifically stated in paragraph 8:

Seller understands that participating in the Pricing Program exposes Seller to the potential risks and rewards of Buyer's confidential and proprietary trading strategy and entails the risk of lower prices than might be obtained outside the Pricing Program.

The addendums referred to by Gavilon also stated in paragraph 14:

BUYER (INCLUDING ANYONE ACTING ON ITS BEHALF) DOES NOT WARRANT, GUARANTEE, PROMISE OR ASSURE ANY MINIMUM PRICE AND DOES NOT WARRANT, GUARANTEE, PROMISE OR ASSURE THAT THE CONTRACT PRICE WILL EXCEED THE PRICE THAT SELLER COULD OBTAIN BY USING THE OTHER MARKETING CHANNELS OR BY ESTABLISHING ITS OWN FUTURES POSITIONS." (Emphasis in original).

Gavilon also referred to other similar terms elsewhere in the addendum and other materials to support its argument.

Gavilon further argued that the plaintiffs waived their claims because they delivered the grain and accepted full payment. The plaintiffs dispute this argument. According to Gavilon, the contracts in this dispute are only 8 of 22 total Producer's Edge contracts agreed upon between the parties over the years. The plaintiffs contest the implications raised by Gavilon's assertion that each of the plaintiffs had entered into other Producer's Edge contracts with Gavilon, which were not in dispute in these cases.

THE DECISION

The contracts provided for the NGFA Rules to apply and were signed by each of the parties.

Under NGFA Grain Trade Rule 1(D), both buyer and seller are to agree in their contract on a price or pricing method. There appeared to be no issue that the Producer's Edge contracts provided the pricing method agreed upon by both the buyer and the sellers in these cases.

NGFA Grain Trade Rule 3 requires that the contract be confirmed in writing by both the buyer and the seller no later than the close of business the business day following the trade. Rule 3 further provides if one party fails to send a confirmation the confirmation sent by the other party will be binding unless the confirming party has been immediately notified by the non-confirming party. In these cases, all contracts at issue were signed. Based on the evidence provided, Hagan and Jenkins also signed the applicable addendums, and Mr. Keach at least once had signed identical addendums in other contracts with Gavilon. At the time surrounding the issuance of these contracts, the plaintiffs did not notify Gavilon of any disagreement with the contracts as written.

NGFA Grain Trade Rule 28(C), which generally addresses "Failure to Perform" by contracting parties, does not apply in these cases because a price was set, and the contracted grain was delivered with respect to each contract at issue.

The arbitrators noted the plaintiffs' claims were well presented, but ultimately Gavilon was not in violation of any trading rules, and in fact Gavilon performed its duties as specified in the Producer's Edge contracts.

The committee was unanimous in its decision.

THE AWARD

Thus, no damages are awarded in these cases

Decided: July 8, 2019

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

Craig Haugaard, *Chair*
Vice President
Sunrise Cooperative, Inc.
Fremont, OH

Stephen Neelly
Senior Merchant
CHS Inc.
Inver Grove Heights, MN

Mike Zick
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