



September 26, 2019

CASE NUMBER 2833

PLAINTIFF: **FIX FARMS**
 WRAY, CO

DEFENDANT: **CARGILL CATTLE FEEDERS LLC**
 ECKLEY, CO

STATEMENT OF THE CASE

In November 2015, Fix Farms and Cargill Cattle Feeders LLC (“CCF”) entered into a 150,000-bushel corn contract (no. 7727) with a “ProPricing MarketPros Addendum.” The purchase price for the original grain contract was to be determined by the hedge price achieved in the ProPricing program. This dispute involves whether the original grain contract was cancelled and obligations under the ProPricing addendum were consequently voided. Fix Farms argues the obligations under the addendum continued. CCF argues the grain contract was cancelled and the ProPricing addendum became void.

Fix Farms stated it had used the ProPricing mechanism to price grain contracts for over 10 years without any issues arising before this dispute. Fix Farms would sign up for a yearly quantity of 150,000 bushels of corn and then deliver the high moisture corn to CCF’s facility in Eckley, CO. Fix Farms claims, in March 2017, it inquired with the ProPricing program representative about other facilities to which Fix Farms could deliver the corn for a basis level preferable than was offered at Eckley. According to Fix Farms, the ProPricing representative advised that it could deliver the grain to two other locations and he would check on a third possible destination.

In April 2017, according to Fix Farms, it inquired to confirm it was signed up for the ProPricing program, and the program representative responded by text: “You are signed up”. CCF argues that in April, it reached out to Fix Farms to obtain a signature on the contract because Fix Farms had originally signed only the addendum and not the underlying corn contract. CCF claims Fix Farms met with a CCF feed lot manager but Fix Farms refused to sign the contract. Instead, according to CCF, Fix Farms agreed with CCF to cancel the contract. Fix Farms disputes that it refused to sign the contract and argues the parties could not come to an agreement on an appropriate basis level.

In September 2017, according to Fix Farms, it inquired about the market destination for the corn, and was then told by another ProPricing program representative that there was no contract as it had been cancelled back in April. Fix Farms argues CCF failed to perform the necessary steps to properly cancel a contract pursuant to NGFA Grain Trade Rule 28.

CCF submits that Cargill, Incorporated is a large corporation, with many internal businesses that work and operate separately. The ProPricing program is managed by Cargill’s agricultural supply chain business. The grain contract in this case was with and managed by CCF, which is Cargill’s cattle feeder

business. CCF notes the grain contract sets the delivery obligations, and the ProPricing addendum provides the grain pricing mechanism.

CCF argues the addendum is not a stand-alone contract. According to CCF, the addendum incorporates the original corn purchase contract and together they constitute the entire agreement. The addendum also states: “This Addendum must be incorporated into Buyers grain purchase contract; it may not operate as a stand-alone agreement.” CCF claims when Fix Farms agreed to cancel the grain contract, the ProPricing addendum was automatically cancelled as well.

The arbitrators note that no actual confirmations or other documentation related to the original corn purchase contract were submitted by either party in this case beyond the November 2015 ProPricing addendum. CCF states it no longer had copies of the original grain contract because the feedlot was subsequently sold, and the related documents were turned over to the new buyer and ultimately destroyed.

THE DECISION

The arbitrators determined that there was no clear understanding or agreement between the parties that the ProPricing addendum was cancelled during the April 2017 meeting. Neither party in this case provided a copy of either the original contract confirmation or any subsequent cancellation of the contract or the ProPricing addendum. The arbitrators refer to NGFA Grain Trade Rule 4 [Alteration of Contract] which states: “The specifications of a contract cannot be altered or amended without the express consent of both the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by written communication by both parties.”

Based upon the information and documentation provided by the parties to the arbitrators, there was no apparent written confirmation issued to Fix Farms by CCF or any other Cargill operation, which demonstrated there was no grain contract or that either the contract or the ProPricing addendum was cancelled. To the contrary, text messages from the ProPricing program representative to Fix Farms during that time period indicated that Fix Farms was still enrolled in the ProPricing program. It is also noteworthy that the program representative discussed other potential delivery points. Ultimately, CCF did not sufficiently attempt to mitigate damages or find acceptable and comparable alternative destinations for Fix Farms.

For these reasons, the arbitrators ruled in favor of Fix Farms in the amount of \$44,250, calculated on the following basis:

Final ProPricing Contract	\$3.955
ProPricing fee	- \$0.120
Net Final ProPricing Price	= \$3.835
CZ2017 settlement price (9/27/2017)	- \$3.54
Net due Fix Farms (per bushel)	= \$0.295
Pro-Pricing contracted bushels	x 150,000
Final amount due Fix Farms	\$44,250.00

The arbitrators also awarded interest to Fix Farms from September 28, 2017 (the day after Fix Farms was notified by CCF of its position that the contract had been cancelled) until payment is made at the rate of 4.50% per annum pursuant to NGFA Arbitration Rule 6(F).

THE AWARD

The arbitrators awarded \$44,250, plus interest, to Fix Farms from Cargill Cattle Feeders, LLC.
Decided: August 28, 2019

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

Mark Heil, *Chair*
General Manager
Prairie Central Cooperative Inc.
Chenoa, IL

John Graverson
Grain Department Manager
Ray-Carroll Grain Growers Inc.
Richmond, MO

Mark Swerczek
Origination Manager
Bartlett Grain Co.
Hamburg, IA