



National Grain and Feed Association Arbitration Decision

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September 23, 2026

CASE NUMBER 3103

PLAINTIFF: AGREX, INC., BUFORD, GEORGIA

DEFENDANT: KEVIN McCUBBIN, HODGENVILLE, KENTUCKY

STATEMENT OF THE CASE

This case involves two contracts in 2020, between Kevin McCubbin and Agrex, Inc.: (1) for the sale and delivery of corn; and (2) for the sale and delivery of wheat. The two contracts provided for McCubbin to deliver a total of 30,000 bushels of grain to Agrex with initial delivery to occur in fall 2020 for the corn contract and summer 2021 for the wheat contract. No delivery of grain occurred under the contracts.

Agrex's claimed damages are in the amount of \$78,712.50 (the difference between the contract prices and the market prices for the undelivered bushels at the time of cancellation less a hedging credit). Agrex also claims costs and attorneys' fees. McCubbin disputes the validity and enforceability of any delivery obligations under the contracts.

The sequence of events leading up to the dispute are as follows:

- In 2020, McCubbin and Agrex entered into two contracts: (1) for the sale and delivery of corn; and (2) for the sale and delivery of wheat.
 - Corn Contract
 - Broker Trade Confirmation dated June 18, 2020
 - Contract ID: 1780205
 - 15,000 bushels #2 Yellow Corn
 - Sent by Broker to McCubbin and Agrex
 - Agrex Confirmation of Purchase dated June 17, 2020
 - Contract No.: 22843
 - 15000.000 BU Yellow Corn
 - Sent by Agrex to McCubbin
 - Wheat Contract
 - Broker Trade Confirmation dated October 7, 2020
 - Contract ID: 1783995
 - 15,000 bushels #2 S.R.W. Wheat
 - Sent by Broker to McCubbin and Agrex

- Agrex Confirmation of Purchase dated October 7, 2020
 - Contract No.: 23075
 - 15000.000 BU Soft Red Wheat
 - Sent by Agrex to McCubbin
- In July 2020, McCubbin, through the broker, asked Agrex to sell call options associated with his contract for the delivery of corn.
- In December 2021, Agrex became concerned that McCubbin may not perform on the open contracts.
- On December 9, 2021, Agrex called McCubbin inquiring as to when he was going to deliver on the contracts.
- On December 30, 2021, Agrex sent a letter to McCubbin asking for assurances that he intended to perform on the two open contracts with Agrex.
- During a telephone call on January 3, 2022, McCubbin acknowledged receiving Agrex's letter but did not commit to delivering on the open contracts.
- On January 13, 2022, McCubbin, through counsel, stated that he had no intention of delivering on the contracts.
- On January 14, 2022, Agrex cancelled the contracts.
- In late January 2022, Agrex sent McCubbin an invoice.

The main arguments by Agrex are as follows:

- In 2020, the broker placed two trades on behalf of McCubbin, resulting in two contracts.
- The broker sent a confirmation to Agrex, and it is Agrex's understanding the broker also sent a confirmation to McCubbin.
- Agrex sent a confirmation of the trade to McCubbin directly.
- McCubbin never objected to the terms of the Agrex confirmations.
- On several occasions, McCubbin, through the broker, requested reasonable modifications to the delivery periods for each of the contracts.
- Confirmations of each modification were sent directly to McCubbin, and McCubbin never objected to the confirmations of the contract modifications.
- Agrex became concerned whether McCubbin was going to perform on the contracts and sought adequate assurances from McCubbin.
- McCubbin, through counsel, stated he had no intention of delivering on the contracts.
- Agrex is entitled to recover \$78,712.50 from McCubbin for his failure to perform on the contracts.
- Pursuant to the indemnification provision, Agrex is entitled to recover \$1,500 in arbitration service fees and reasonable attorneys' fees incurred by Agrex.

The main arguments by McCubbin are as follows:

- The broker was an agent of Agrex, not McCubbin.
 - NGFA Grain Trade Rule 2 mandates a broker has the power to bind his principals only to the extent of his instructions. Rule 2 also provides principals are not liable for any acts of the broker in excess of these instructions.
 - Agency relationship between Agrex and the broker was clear: (1) unbeknownst to McCubbin, the broker would call Agrex and sell grain under McCubbin's name; (2) Agrex would not verify the sale with McCubbin; and (3) Agrex and the broker would then draft contract confirmations and send them to each other instead of McCubbin.
 - Past deliveries do not constitute consent to future contractual obligations.
 - McCubbin does not even produce wheat.
- Even if McCubbin authorized the contracts, Agrex violated the implied duty to act in good faith and NGFA Grain Trade Rule 3(A) by failing to timely send written confirmations.
 - Implied duty of good faith and fair dealing in every contract.
 - Agrex failed to timely send written confirmations, and McCubbin never had the opportunity to object to the transactions.
 - NGFA Trade Rule 3(A) requires that confirmations be sent by close of business day following the date of trade. Agrex does not identify the dates the confirmations were sent to McCubbin.
 - Earliest date McCubbin could object to the contracts was January 3, 2022, when it received the package from Agrex.
- Agrex violated NGFA Grain Trade Rule 4 by not securing McCubbin's immediate consent confirmed in writing.
 - Agrex altered and amended the alleged contracts without the express consent of McCubbin.
 - Immediacy requirement of NGFA Grain Trade Rule 4 was not met.
- NGFA Grain Trade Rule 28(D) should be applied to Agrex's actions.
 - Under NGFA Grain Trade Rule 28(D), the defaulting party is not entitled to compensation.
- NGFA has arbitrated cases with similar fact patterns in the past.
 - In Case No. 2839, the plaintiff provided no evidence that it properly amended contracts for additional rolls or informed the defendants of new basis levels, which resulted in a violation of NGFA Grain Trade Rule 4. The arbitration committee recognized that the plaintiff had an obligation to send amended contract basis adjustments to the defendants.
 - In accordance with Case No. 2427, damages should be based on the difference between the original contract price and the commodity price on the day the contract was "washed out." Similar to that case, McCubbin never agreed to roll the contracts.

- Agrex’s interpretation of the applicable UCC provisions is misguided.
 - Kentucky law permits unsigned contract confirmations to be enforceable if between merchants.
 - But there has to be an underlying oral contract that is being confirmed by a timely confirmation.
 - There was no underlying oral contract entered into with respect to the disputed transactions.
- McCubbin alleges that the contracts and subsequent rolls are void and unenforceable.

THE DECISION

NGFA Grain Trade Rule 3(A) requires the confirmation of trade to be sent by one party to the other by the close the business day following the date of trade. The broker in this case sent trade confirmations to Agrex on June 18, 2020, and October 7, 2020. Agrex sent McCubbin confirmations of purchase on June 17, 2020, and October 7, 2020. Confirmations were sent by Agrex to McCubbin by close of the business day following the date of trade.

McCubbin never objected to the confirmations for either the corn or wheat contracts sent by the broker.

The trade confirmations sent by the broker contained the following language:

This Contract shall be subject to the Trade Rules of the National Grain and Feed Association (NGFA), which Trade Rules are incorporated herein by reference. The parties agree that the sole forum for resolution of all disagreements or disputes between the parties arising under this Contract or relating to the formation of this Contract shall be arbitration proceedings before NGFA pursuant to NGFA Arbitration Rules.

McCubbin never objected to either the corn or wheat confirmations of purchase sent by Agrex. The Agrex confirmations of purchase state, “Please sign and return duplicate copy of this contract. Failure to do so or take exception and notify AGREX INC., immediately will constitute acceptance by Seller.”

Agrex’s standard terms and conditions on the back side of the confirmations of purchase include an agreement to incorporate the NGFA Trade Rules and agreement to arbitrate disputes through the NGFA.

Each contract was a hedge-to-arrive contract that obligated McCubbin to deliver grain at a set futures price per bushel with basis to be set at a later date.

On several occasions, McCubbin, through the broker, requested reasonable modifications to the delivery periods for each of the contracts.

The modifications resulted in several extensions of the delivery periods with the final delivery periods for the contracts falling in March 2022.

Confirmations of each modification were sent directly to McCubbin, and McCubbin never objected to the confirmations of the contract modifications.

Just three months prior to the June 17, 2020 contract, McCubbin, through the services of the same broker involved in this arbitration case, entered into a different contract with Agrex, and McCubbin delivered grain on that contract for which he received payment.

Agrex in the contracts in this case had reason to believe that this same broker had the authority to facilitate these contracts on behalf of McCubbin as the broker did just months prior.

McCubbin should have informed Agrex that McCubbin's services with the broker were severed.

If McCubbin believes that the broker may have exceeded its authority, McCubbin may have recourse against the broker for resulting damages incurred by McCubbin. Agrex had reason to proceed on the broker's having authority to act on McCubbin's behalf for the contracts in June and October 2020 just as for the contract in March 2020 upon which McCubbin delivered and was paid.

THE AWARD

The arbitrators award \$78,712.50 to Agrex, Inc. from Kevin McCubbin.

No interest or legal fees are awarded.

Decided: February 13, 2025

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

Bruce Weber, *Chair*

Senior Trader

CHS

Inver Grove Heights, MN

Katelyn Schwiderski

Staff Attorney

GROWMARK Inc.

Bloomington, IL

Hayden Sholtis

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ADM

Decatur, IL