



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

December 3, 1987

Arbitration Case Number 1639

Plaintiff: Dillwyn Grain and Supply Co., Dillwyn, Kan.

Defendant: Farmers Commodities Corp., Kansas City, Mo.

Statement of Case

In this case, Dillwyn Grain and Supply Co. (Dillwyn) sought to recover damages against Farmers Commodities Corp. (FCC) for the alleged failure of FCC to execute a "substitution PIK-and-roll" transaction.

Under the "Substitution of Acquired Grain for Loan Purposes Program" of USDA's Agricultural Stabilization and Conservation Service, a producer and warehouseman (as it relates to this case) could request reconcentration of warehouse-stored loan grain. This was accomplished by substituting eligible loan grain stored in Kansas for grain purchased, in store, in North Dakota. The loan then would be settled at the North Dakota loan rate and immediately redeemed with generic commodity certificates using the posted county price in North Dakota. The producer then would sell his grain stored both in Kansas and North Dakota, resulting in increased net proceeds to the producer and warehouseman.

Dillwyn asserted that FCC had made an oral contract in which FCC promised Dillwyn a North Dakota warehouse (Fessenden Co-op) would be willing to participate in "substitution PIK-and-roll" for a commission of 10 cents per bushel. Dillwyn further stated that for negotiating the transaction, FCC would receive a commission and Dillwyn would charge 3 cents per bushel commission for executing the transaction, resulting in 13 cents per bushel commission for Dillwyn and Fessenden Co-op. When Fessenden Co-op fail-

ed to commit, Dillwyn negotiated with International Multifoods, Inc., of Crystal, N.D., to participate for 30 cents per bushel commission on 765,974.42 bushels and Dillwyn charged 1 cent per bushel commission, totaling 31 cents per bushel.

Since Dillwyn transacted the PIK-and-roll with International Multifoods for 31 cents a bushel instead of Dillwyn's potential trade with Fessenden Co-op at a cost of 13 cents per bushel, damages of 18 cents per bushel on 765,974.42 bushels (or \$137,875.40) were claimed by Dillwyn. As a result of the higher commission rate for the trade, Dillwyn did not mark up \$318,381.38 of generic certificates by 1 percent (or \$3,183.81) as previously planned, thus bringing the total damage claimed to \$141,059.21 (\$137,875.40 plus \$3,183.81).

Dillwyn stated that an oral contract existed between Dillwyn and FCC, which held FCC as a principal and not a broker. Dillwyn contended it relied on the oral contract between Dillwyn and FCC when it purchased generic certificates through FCC. Therefore, Dillwyn contended FCC was legally "estopped" to deny the existence of the contract.

FCC contended that in acting as a fully disclosed broker between Dillwyn and the North Dakota warehouse (Fessenden Co-op), it had attempted to complete the proposed "substitution PIK-and-roll" transaction in good faith in compliance with the rules and customs governing such transactions. FCC asserted no contract existed between it and Dillwyn.

The Decision

It is the custom of the trade to make oral contracts and to send confirmation in writing, setting forth the specifications as agreed upon in the original articles of the oral trade by the buyer, seller and broker when involved. A review of the evidence presented in this case revealed that no confirmation was issued by either Dillwyn, Fessenden Co-op or FCC. The arbitration panel reasoned that with the potential profits and commissions involved, one or more of the parties would have confirmed the contract if, in fact, any of the involved parties believed a contract existed.

Had a contract existed and been believed to be in force, Dillwyn would have reacted immediately to the remedies common in the trade for breach of contract. No evidence was presented to indicate that "notice" was given and "buy-in" was occurring when Dillwyn began negotiating with others to participate in "substitution PIK-and-roll."

An essential element of a contract is mutual assent or an agreement by the parties for a contract to exist. In the opinion of the arbitrators, that element was nonexistent in this case. The arbitration panel believed that reliance upon generic certificate purchases from FCC as evidence that a contract existed was not reasonable because of the variety of uses for such certificates. Dillwyn did not prove that FCC knew its generic certificate purchases would be used only for a transaction utilizing corn in-store at Fessenden Co-op;

therefore, the "estoppel" argument was not valid.

To maintain that FCC was a principal to the trade, one would have to assume that FCC had control of the essential property to consummate the trade: namely a warehouse in North Dakota with receiptable grain and warehouse receipts. The affidavits presented and the longevity of the association between Dillwyn and FCC did not warrant a conclusion that FCC was acting other than as a commission broker. Since the testimony seemed to change over time to solidify one's position, the arbitrators found no evidence to substantiate that FCC exceeded its authority as a broker. Therefore, we ruled that FCC should not be liable for resulting damages as claimed by Dillwyn.

For the aforementioned reasons, the arbitration panel ruled unanimously in favor of the defendant, and no damages were awarded.

Submitted with the consent and approval of the arbitration panel, whose names are listed below:

Dan B. Miller, Chairman
Kokomo Grain Co., Inc.
Kokomo, Indiana

James Mayer
James Mayer & Associates, Inc.
Maplewood, New Jersey

William Crawford
Moweaqua Farmer Co-op Grain Co.
Moweaqua, Illinois