Arbitration Decision
National Grain and Feed Association

August 31, 1995

Arbitration Case Number 1752

Plaintiff: Coshocton Grain Co., Coshocton, Ohio

Defendants: Tim Geiger and John Geiger, Mount Vernon, Ohio

Statement of the Case

This case involved the purchase of corn and soybeans under two contracts. The plaintiff purchased from the defendants 5,000 bushels of U.S. No. 2 corn for January 1994 delivery at $2.47 per bushel (contract number 654) and 5,000 bushels of U.S. No. 1 soybeans for "new crop" (1993) delivery at $6.03 per bushel (contract number 449).

The plaintiff claimed that the defendants agreed to the cancellation of contract number 449 on Oct. 25, 1993 for a cancellation charge of 10 cents per bushel. The plaintiff further claimed that the defendants canceled contract number 654 on Dec. 2, 1993 at a price of $2.98 per bushel, resulting in a cancellation charge of 51 cents per bushel. The plaintiff invoiced the defendants for the two cancellation charges and, upon not receiving payment, filed suit in municipal court in Coshocton County, Ohio. That suit was stayed by the court pending the outcome of this arbitration proceeding.

The defendants claimed that delivery was excused under Ohio law, which states that a seller is not obligated to deliver if the seller knows the buyer to be insolvent. The plaintiff's Ohio grain handler's license was suspended and reinstated, and the plaintiff was placed into receivership during October 1993. The defendants further argued that they received a letter from Coshocton Elevator stating that Coshocton Elevator had purchased the plaintiff's assets, including "the Geiger Grain contract," and that the defendants were told by Coshocton Elevator that "Coshocton Elevator didn't care whether the contract was fulfilled or not."

The plaintiff sought cancellation charges of $3,050, plus reimbursement of attorney's fees and the costs of arbitration.

The Findings

Contract numbers 654 and 449 were signed without modification by Tim Geiger, and acceptance of the contracts was not challenged by the defendants.

The defendants stated that they received a letter from Coshocton Elevator claiming to have purchased the assets of the plaintiff, including "the Geiger Grain contract." However, the defendants offered no documentation to support this statement. The plaintiff's filing of the lawsuit leading to this arbitration case clearly indicated that the plaintiff still claimed an interest in these contracts. The court's referral of these specific parties to arbitration also suggested that these are the correct parties. Further, the arbitrators had no way to determine which of the two contracts Coshocton Elevator allegedly purchased. All references by the defendants to the purportedly purchased Geiger contract are in the singular, yet the defendants never stated which of the two contracts being arbitrated was allegedly purchased by Coshocton Elevator. In the absence of agreement by the parties or some evidence of modification of the contract, the arbitrators found that the contracts were binding as originally written.

The defendants also argued that delivery of the contracts was excused under state law because the plaintiff was insolvent. Each party submitted conflicting evidence and testimony relating to the plaintiff's solvency at various times. The provisions of Ohio law submitted by the defendants referred only to delivery. However, all parties to this arbitration agreed that the contracts in question were canceled by the defendants. This is not an action to compel delivery, but to determine what cancellation charges, if any, should apply. None of

the language submitted to the arbitrators altered the duty of the defendants in this instance.

While the Uniform Commercial Code provisions of Ohio law under some circumstances may excuse a party from delivering products to an insolvent buyer, any right not to deliver presumably is intended to protect a seller from undue credit risk. Any right the defendants may have had to avoid delivering to an insolvent buyer was satisfied by cancellation of the contracts. *(Note: The arbitrators did not determine that the plaintiff was insolvent. Rather, the arbitrators determined that cancellation of the contracts made the delivery issue moot, but left contract cancellation settlement an open issue.)*

Within the NGFA's Arbitration System, arbitrators apply contract terms as they are written. In the absence of written contract terms governing a particular issue, arbitrators generally apply the NGFA Trade Rules.[1] In the absence of either an applicable contract provision or an applicable trade rule, arbitrators apply customary trade practice.

In this case, Coshocton Grain Co.'s contracts did not specify cancellation terms. Similarly, no specific NGFA trade rule addresses the particular facts of this case. Various trade practices are used in the event the seller chooses not to deliver against a contract. One widely used practice is to cancel the contract at fair market value, with or without cancellation penalties. One party is not permitted, either by trade rule or by custom, to unilaterally cancel a contract and to refuse to settle the canceled contract.

The purpose of the NGFA's Trade Rules and trade practices are to maintain the integrity of contracts. By settling canceled contracts at fair market value, neither the buyer nor the seller incurs a gain or loss as a result of cancellation. Either party can go immediately into the market and reestablish its position with another party with the same economic effect as the original contract. This eliminates the incentive for finding reasons not to deliver if the market moves against a contract commitment, yet does not penalize a party who is unable to deliver for cause.

The plaintiff claimed that the defendants agreed to cancel contract number 449 on Oct. 25, 1993 at a charge to the defendants of 10 cents per bushel. The defendants agreed that they discussed such a cancellation, and that they believed the 10 cents represented the market difference between the contract price and the market price at the time of the discussion. However, the defendants stated that they did not accept this offer. The defendants expressly admitted in their response to the complaint that they canceled both contracts. The defendants did not offer any other date of cancellation, or any other prices on which a cancellation settlement might be based. The plaintiff invoiced the defendants promptly for the cancellation charge. The plaintiff claimed, and the defendants did not refute, that the defendants did not object to the invoice when it was received.

The Decision

Given the defendants' acknowledgment that the proposed cancellation fee was a market difference, that the defendants did not raise an objection to the invoice when it was received and that the defendants did not offer any alternative basis for settling the canceled contract, the arbitrators found that the plaintiff's determination of the contract cancellation charge was consistent with customary trade practice.

The plaintiff claimed that the defendants canceled contract number 654 on Dec. 2, 1993, and that the relevant market price on that date was $2.98 per bushel. Neither party offered any description whatsoever of the events of Dec. 2. The defendants did not dispute this date, nor did they offer any alternative date or price for determining a cancellation charge. In the absence of any proposed alternative, the arbitrators found the plaintiff's determination of the contract cancellation charge was consistent with customary trade practice.

The Award

The arbitrators awarded the plaintiff, Coshocton Grain Co., the amount of $3,050 ($2,550 for contract number 654 and $500 for contract number 449). The plaintiff did not request interest, so no interest was awarded. The plaintiff's claims for attorney's fees and costs of arbitration were denied.

Submitted with the unanimous consent and approval of the arbitrators, whose names are listed below:

Kenneth E. Klemme, *Chairman*
Demeter Inc.
Fowler, Ind.

Mike Badger
Sun Mark Ltd.
Mansfield, Ohio

Beverly McBride
The Andersons
Maumee, Ohio

[1] *In this case, the parties' contracts referred to the "trade regulations of the Grain and Feed Dealers National Association," the former corporate name of the National Grain and Feed Association.*