



Arbitration Decision

National Grain and Feed Association

August 15, 1996

Arbitration Case Number 1762

Plaintiff: Douglas Sinn, Knox, Ind.

Defendant: Starke County Farm Bureau Co-op, Hamlet, Ind.

Statement of Case

In February 1995, Douglas Sinn (Sinn), a grain producer, and Starke County Farm Bureau Co-op (Starke County) entered into several contracts for the delivery of waxy corn to American Maize-Products Co., Hammond, Ind.

Starke County issued a "Confirmation of Purchase and Contract" for each transaction. The terms of the contracts stated, *"Unless otherwise provided herein, this contract: (a) shall be governed by the Trade Rules of the National Grain and Feed Association, in effect as of the date of execution hereof, said Trade Rules being incorporated herein by this reference; (b) shall constitute the entire agreement between the parties; (c) shall supersede all prior agreements, oral or written, with the respect to the commodity specified herein; and (d) shall not be valid unless signed by an authorized representative of the Buyer and may not be modified, except in writing signed by the Buyer and Seller."*

The contract terms also stated any disputes involving the contracts would be submitted to the National Grain and Feed Association for final and binding arbitration.

Two of the contracts between the parties were flat price contracts that had the cash price fixed at the time the parties entered into the contracts. Four of the contracts were basis contracts, which required establishing a flat price at some future time. The written contracts were silent on the procedure to be used to determine the final fixed price on the basis contracts.

Sinn claimed that Starke County priced contract number 1015 on March 10, 1995 without his knowledge and/or consent. He stated that his intention was to price the corn after it had been delivered. Starke County responded that Sinn did, in fact, price the basis contract on March 10, 1995 by locking in the December 1995 corn futures at \$2.60 per bushel; accounting for the + 20-cent basis would equate to a final cash price of \$2.80 per bushel.

Sinn further claimed that Starke County unilaterally altered contract number 1015 after he signed the original basis contract by writing the aforementioned pricing on the face of the basis contract. The written copy of contract number 1015 showed that it was written on Feb. 15, 1995 for 7,000 bushels of waxy corn at + 20 cents December delivered American Maize for October-November 1995 Buyer's Call.

Starke County did not dispute that it failed to issue a written pricing of contract number 1015. Starke County stated, *"Although the contract states a modification should be in writing, in the past, business has frequently been conducted without requiring signatures and we have gone on the verbal pricing order of the farmer. Further, we have no incentive to price it in any way other than as directed by the producer, because we trade on the basis."*

Sinn also claimed that contract number 1009 was part of contract number 1015. He further stated that he priced 1,000 bushels of that contract on July 17, 1995 and should be paid \$3.25 per bushel for the 1,000 bushels represented by that agreement.

Sinn delivered 6,700 bushels of waxy corn and Starke County paid him \$2.80 per bushel based on its pricing of

contract number 1015. Sinn claimed he was owed \$4,668 because of the difference in price between his pricing of contract number 1009 and the price of waxy corn on the date of delivery (\$3.34 per bushel on Dec. 16, 1995).

• Contract number 1009	
1,000 bushels at \$3.25 per bushel	= \$ 3,250
Minus \$2.80 per bushel paid	= \$ 2,800
Difference:	\$ 450
<i>and</i>	
• Contract number 1015	
5,700.00 bushels at \$3.54 per bushel	= \$20,178
Minus \$2.80 per bushel paid	= \$15,960
Difference:	\$ 4,218
TOTAL = \$ 4,668	

The Decision

The arbitration committee agreed with Douglas Sinn that the Starke County Farm Bureau Co-op failed to issue a valid written pricing of contract number 1015. The terms of the contract expressly stated that any change in the terms of the contract were to be made in writing and signed by the buyer and the seller. Further, NGFA Grain Trade Rule 41 provides as follows: *"The specifications of a contract cannot be altered or amended without the expressed consent of both the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed in writing."* It also was noted by the arbitrators that Starke County issued a printed pricing in all previous basis contract pricings.

However, the arbitration committee did not comprehend how contract number 1009 could be a part of contract number 1015 as claimed by Sinn. Contract number 1009 was written on Feb. 16, 1995 for 4,000 bushels of waxy corn at + 22-cents March 1996 CBOT futures for delivery in March 1996. Those terms did not match the terms of contract number 1015.

To determine a price for waxy corn sold under contract number 1015, the arbitrators relied upon NGFA Grain Trade Rule 30, which reads: *"Unless otherwise agreed, all unpriced contracts shall be priced within the day's price range at Buyer's option, while futures markets are open and tradeable. In no case shall pricing go beyond the requested date of shipment, or the date of actual shipment, or the day before the first notice day of the contract futures month involved, whichever comes first."* Thus, the arbitrators concluded that contract number 1015 should have been priced no later than Nov.

29, 1995 (the day before the first notice day of the December 1995 corn futures). Using the closing price of \$3.2875 per bushel on December corn on Nov. 29, 1995 and adding the basis on the contract (+ 20-cents CZ), the net cash price should have been \$3.4875 per bushel.

Therefore, the arbitration committee found in favor of the plaintiff, Douglas Sinn, in the amount of \$4,606.25. The figure was derived by calculating the difference between the \$2.80-per-bushel price paid to Sinn and the committee's adjusted contract price of \$3.4875 per bushel on 6,700 bushels of waxy corn delivered on contract number 1015.

Counterclaim by Starke County Farm Bureau Co-op

In addition to the disagreement concerning the pricing of contract number 1015, there were several ancillary disputes existing between Douglas Sinn and Starke County Farm Bureau Co-op. One involved Sinn's claim that Starke County improperly sprayed chemicals and fertilizer on his land. Another involved Sinn's claim that Starke County would "keep him busy through the end of the year" hauling grain with his grain truck.

It appeared to the arbitrators that the parties argued about several of these matters between October and December 1995. Starke County priced and paid Sinn for the 6,700 bushels of waxy corn he delivered on Dec. 16, 1995 at \$2.80 per bushel. Because the two parties could not agree on that matter, Sinn failed to deliver the corn covered by contract numbers 1009, 1010, 1012, 1013 and 1014. Starke County counterclaimed for default of delivery on these contracts by Sinn.

Starke County presented a counterclaim involving the following issues:

- Pricing of contract number 1015.
- Truck usage.
- Improper application of chemicals.
- Counterclaim of default on grain contracts.

The Decision on the Counterclaim

The arbitration committee addressed the subject of the pricing of contract number 1015 and believed its decision on that matter should stand. The committee believed that if a grain company references the NGFA's Trade Rules in producer contracts, it should be willing to do business under those terms unless deviating from them in writing.

However, the arbitrators did not believe that the claims of truck usage or improper application of chemicals and/or fertilizer came under their jurisdiction.¹

With respect to the default on delivery by Douglas Sinn, the arbitration committee believed that it had jurisdiction. Sinn stated through his attorney that he did not dispute the fact that he failed to perform fully on other contracts unrelated to contract number 1015. Considering this admission, and referencing NGFA Grain Trade Rule 43 -- Failure to Perform, the committee ruled in favor of Starke County Farm Bureau Co-op with respect to the default on contract numbers 1010, 1012, 1014 and the undelivered portion of contract number 1015.

Because of the default on these contracts, the arbitration committee found that Douglas Sinn owed damages of \$3,339.93 to Starke County Farm Bureau Co-op on its claims, computed as follows:

• Contract number 1010 -- (1,000 bushels):	
Contract price (per bushel)	= \$2.8475
Market price on April 1, 1996	= \$4.31 per bushel
Difference	= \$1.462 per bushel
Amount due Starke County	= \$1,462.50
• Contract number 1012 -- (1,000 bushels, priced):	
Contract price (per bushel)	= \$3.05
Market price on Feb. 1, 1996	= \$3.865 per bushel
Difference	= \$0.815 per bushel
Amount due Starke County	= \$815

• Contract number 1014 -- (1,000 bushels):	
Contract price (per bushel)	= \$2.8275
Market price on Feb. 1, 1996	= \$3.865 per bushel
Difference	= \$1.0375 per bushel
Amount due Starke County	= \$1,037.50
• Undelivered Balance	
of contract number 1015 -- (302.15 bushels short):	
Contract price (per bushel)	= \$3.4875
Market price on Dec. 15, 1996 ²	= \$3.57 per bushel
Difference	= \$0.0825 per bushel
Amount due Starke County	= \$24.93

The Award

The net balance due to Douglas Sinn was \$1,266.32. Starke County Farm Bureau Co-op was directed to pay this amount, without interest, to Douglas Sinn without delay.

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

William Bluml, Chairman
Manager
West Central Cooperative
Ralston, Iowa

Kim Dauch
Grain Merchandiser
Auglaize Farmers Co-op
Wapakoneta, Ohio

Jake Wiener
Manager of Origination
Consolidated Grain and Barge Co.
Cincinnati, Ohio

¹National Secretary's Note: Since the issue of the extent of the committee's jurisdiction in this case involved a mix of procedural and substantive matters, the NGFA secretary offers the following comments to more fully explain the committee's decision. The parties were in disagreement over the matters subject to arbitration in this case. The plaintiff's original attorney submitted the request for arbitration by letter (Letter No. 1) dated Dec. 28, 1995, to which he attached a separate letter (Letter No. 2) addressed to the defendant, Starke County Farm Bureau Co-op. While Letter No. 2 discussed matters other than the contracts between the parties, Letter No. 1 provided that "[w]e would like to submit all of the contracts to the National Grain and Feed Association for arbitration." The plaintiff's first attorney died in a plane crash on Jan. 6, 1996. The plaintiff, in his first argument filed in this case, raised only the issues related to the contracts. The non-contractual issues were raised by the defendant in its arguments.

While the term "dispute" as used in Section 2 of the NGFA's Arbitration Rules has been construed broadly when applied to situations involving compulsory arbitration between NGFA Active or Allied members, the plaintiff in this case was not a NGFA member. Thus, the matters to be arbitrated in this case involved only those matters on which the parties consented to arbitrate with each other. The parties' grain contracts provided that "[i]n the event of a dispute arising hereunder, the parties agree to submit the dispute to the National Grain and Feed Association for final and binding arbitration." The committee, therefore, had the power to determine which matters were subject to arbitration in this case.

² Delivery of contract number 1015 was made on Dec. 16, 1995 -- a Saturday. The custom of the trade would be to use the closing market price on the Friday before delivery. Thus, the market price on Dec. 15, 1996 was used to calculate the difference in market price on this contract.