National Grain and Feed Association
Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: http://www.ngfa.org

October 19, 2000

Arbitration Case Number 1810

Plaintiff: Consolidated Grain & Barge Co., Freeport, Ill.

Defendant: Scott Tegeler, *aka* V. Scott Tegeler, Milledgeville, Ill.

Statement of the Case

This dispute, boiled down to its essentials, could have been avoided or completely mitigated had the defendant opened and read his mail. The twists and turns on the way to the decision in this case were many, costly and time-consuming.

The facts leading to this dispute arose[1] from a contract entered into on May 19, 1995, via telephone between a representative of Consolidated Grain and Barge Co. (CGB), the plaintiff, and Scott Tegeler, *aka* V. Scott Tegeler (Tegeler), the defendant. The evidence showed that Tegeler on that date telephoned CGB and negotiated the terms of three separate contracts: 1) to sell 1,400 bushels of soybeans for June 1995 delivery; 2) to sell 7,000 bushels of U.S. No. 2 yellow corn for June 1995 delivery; and 3) to enter into a "futures-only" contract for 75,000 bushels of U.S. No. 2 yellow corn for delivery in October 1995 to Savanna, Ill. The"futures-only" contract was the only contract in dispute in this case and the primary issue was whether Tegeler was bound to deliver the quantity of 75,000 bushels shown on the CGB confirmation or the lesser quantity of 7,500 bushels that he later claimed was his intention to sell on that date.

The terms and conditions of the CGB purchase contract confirmation[2] called for Tegeler to deliver 75,000 bushels of U.S. No. 2 yellow corn to a Savanna, Ill., facility during the period Oct. 1-31, 1995. The confirmation also expressly provided that the grain was sold based on a "futures-only" reference price of $2.69 per bushel, less a fee of 0.01 cents per bushel, for a net of $2.68 per bushel. Delivery was to be by seller's truck with destination weights and grades to apply at the time of delivery. Further terms required the basis to be established by the first day of the delivery period. The contract also contained provisions (amplified later in this decision) making it subject to the NGFA Trade Rules and NGFA Arbitration.

Tegeler on Sept. 13, 1995 began to deliver corn to CGB's Savanna, Ill., facility and requested that the corn be sold at the current market price. Delivery of corn continued until Oct. 5, 1995, when Tegeler switched to harvest soybeans. A total of approximately 66,000 bushels of corn had been delivered and sold at the current market price during this period.

The evidence showed that a CGB representative on Oct. 2, 1995, contacted Tegeler and asked whether he intended to deliver corn against his "futures-only" contract, or whether Tegeler wanted to move out the delivery period to November 1995. Tegeler responded by requesting that his deliveries

---

[1] *This case was initiated by Consolidated Grain and Barge Co. (CGB) by letter from its attorney dated Feb. 6, 1997. A state court order compelling arbitration already had been issued in* ***Scott Tegeler v. Consolidated Grain and Barge Co.****, No. 95L 19 (Circuit Court of Carroll County, Ill., Jan. 17, 1997) (order finding Tegeler to be a merchant and bound by arbitration clause in confirmations sent to him by CGB). Subsequent to the filing of CGB's arbitration complaint, Tegeler obtained a stay of the order compelling arbitration pending an appeal to an Illinois appellate court. The appellate court eventually issued an order affirming the trial judge's order compelling arbitration.* ***Scott Tegeler v. Consolidated Grain and Barge Co.****, No. 2—97—0188 (Ill. Second District Appellate Court, Feb. 2, 1998). Tegeler then sought reconsideration of the case before the appellate court. When that was unsuccessful, Tegeler filed a petition for leave to appeal with the Illinois Supreme Court. The Illinois Supreme Court denied the appeal. [Scott Tegeler v. Consolidated Grain and Barge Co., No. 85242 (Ill. Supreme Ct., June 3, 1998)]. Further delays ensued while Tegeler sought new counsel to represent him in the arbitration case.*

[2] *CGB contract number 0054048 dated May 19, 1995.*

© Copyright 2000 by National Grain and Feed Association. All rights reserved. Federal copyright law prohibits unauthorized reproduction or transmission by any means, electronic or mechanical, without prior written permission from the publisher, and imposes fines of up to $25,000 for violations.

continue to be sold at the current spot market price. Tegeler also requested extension of the delivery period on the "futures-only" contract to November 1995. Notwithstanding this discussion, no further contract confirmation or written amendment notice was provided by either CGB or Tegeler as to the requested delivery period change.

A CGB representative on Oct. 12, 1995, telephoned Tegeler and spoke to his wife. She was asked whether they wanted deliveries posted to the existing outstanding contract of 75,000 bushels or to continue with spot purchases. The facts indicated that Mrs. Tegeler conferred with her husband before responding that Tegeler wanted to continue with spot market sales. She also indicated to the CGB representative that there must be a problem, since only 7,500 bushels of corn had been contracted. It was after this conversation that the Tegelers apparently searched through their filed, but unopened mail, and found all three of the May 19, 1995, contract confirmations sent to Tegeler by CGB. It was then, for the first time, that Mrs. Tegeler told the CGB representative that Tegeler believed that he had contracted to deliver 7,500 bushels of corn rather than 75,000 bushels.

Two CGB representatives met with Tegeler on Oct. 16, 1995 to discuss the outstanding contract and attempt a resolution. A request was made by CGB to have Tegeler acknowledge the existing open contract by signing the written confirmation and to deliver the quantity set forth in the confirmation. Tegeler refused to sign the confirmation. CGB provided two other alternatives: 1) CGB would "buy-in" the contract; or 2) CGB would roll out the delivery period to the following harvest of 1996. These suggestions also were rejected. CGB at the end of November 1995 declared Tegeler in default on the contract[3].

The evidence showed that, during the depositions and court proceedings leading up to this arbitration case, Tegeler argued that he had never sold 75,000 bushels of corn in a single contract that early in the crop year and that wet weather conditions at planting made it inadvisable to forward contract such a large quantity. CGB provided documentation of 14 previous contracts it had entered into with Tegeler. While Tegeler only signed and returned six of the 14 contracts, he nevertheless performed on each. The court concluded the contract confirmation sent in this case bound Tegeler, but that there was a dispute as to the quantity sold by Tegeler to CGB.

CGB submitted a claim for damages of $47,250, which was the difference between the price of the May 19, 1995, contract and the closing price on Dec. 1, 1995, of December 1995 corn futures at the Chicago Board of Trade. CGB also sought interest until paid, along with attorney fees and costs, which included extensive discovery, preparation for and a trial on the issue of whether the issues should be arbitrated, plus subsequent judicial appeals.

The Decision

The arbitrators reached the following conclusions after a thorough review of the documentation presented by both parties.

The parties clearly entered into an oral contract on May 19. 1995. Likewise, CGB on May 20, 1995, mailed a confirmation of the oral contract to Tegeler in accordance with NGFA Grain Trade Rule 6 and general trade custom. The trial court also found that a binding contract was entered into between the parties. The court's conclusion was based upon its finding that Tegeler was a "merchant" under Illinois law and that the contract "need not be signed by both parties to be binding." Likewise, the court found that Tegeler "did not reject the alleged discrepancy as to the bushels to be sold until a time almost five months after the contracts had been mailed to him. This is hardly a reasonable time or even the 10 days set forth in [the Illinois version of the Uniform Commercial Code]."

In addition to containing an express provision requiring NGFA arbitration under the NGFA Arbitration Rules, the parties' contract expressly provided that it was "subject to National Grain and Feed Association trade rules in effect on the date hereof." NGFA Grain Trade Rule 6, in effect on May 19, 1995, provided in relevant part as follows[4]:

"(a) **Confirmation:** It shall be the duty of both Buyer and Seller, not later than the close of business day following date of trade, to mail, each to the other, a confirmation in writing (the Buyer a confirmation of purchase, and the Seller a confirmation of sale) setting forth the specifications as agreed upon in the original articles of trade. **Upon receipt** of said confirmation, **the parties thereto shall carefully check all specifications named therein** and, upon finding any differences, **shall immediately notify the other party to the contract**, by telephone and confirm in writing, except in the case of manifest errors and differences of minor character, in which event, notice by return mail will suffice....

(c) If either Buyer or Seller fails to send out confirmation, **the confirmation sent out by the other party will be binding upon both in case of any dispute**, unless confirming party has been immediately notified by nonconfirming party, as de-

[3] *The evidence showed that CGB also closed out its offsetting futures position on the cash contract on Dec. 1, 1995.*

[4] *The substantively identical terms now are set forth as NGFA Grain Trade Rule 3.*

scribed in 6(a), of any disagreement with the confirmation received." [Emphasis added.]

The NGFA Trade Rules are very clear. Tegeler had a duty to read the confirmation "upon receipt." Tegeler had a duty to "immediately notify" CGB of any differences between the oral agreement and the written confirmation. Failure on Tegler's part to immediately notify CGB of any discrepancies irrevocably bound Tegeler to the terms set forth in the CGB confirmation. Had Tegeler examined the contract confirmation when received, the discrepancy as to the quantity contracted would have been resolved promptly. In any event, the confirmation sent by CGB represents the best evidence of the terms and conditions orally agreed to by both parties. The NGFA Trade Rules make the CGB confirmation binding upon both parties under the facts of this case.

Regarding the extension of the contract for the delivery period to the end of November 1995, there was no written documentation presented by either party confirming this change. Therefore, there was some question as to whether the delivery period actually was extended[5]. The original contract terms show the delivery period as October 1995. The arbitrators unanimously agreed Tegeler defaulted against delivery on the CGB "futures-only" purchase contract. The original "futures-only" price was $2.69 per bushel. The December 1995 futures corn price was $3.325 at closing on Oct. 31, 1995. This difference equaled $0.635 per bushel multiplied by 75,000 bushels, which equaled market damages of $47,625. In contrast, CGB sought damages based upon its purchase of an offsetting contract on Dec. 1, 1995 to cover for Tegeler's failure to deliver. Damages calculated on this latter date amounted to $47,250, a slightly lesser sum. The arbitrators concluded that awarding the lesser amount was in accordance with the evidence submitted.

The CGB purchase contract outlined the following conditions in numbered paragraph 12:

"Upon breach of this contract by Seller...(i) Buyer shall be entitled to collect from Seller reasonable attorney's fees incurred by Buyer in connection with enforcement of this contract and/or the breach by Seller; (ii) Buyer shall be entitled to collect from Seller interest on any amount owing to Buyer by reason of Seller's breach, at the rate of 1 ½% per month, or fraction thereof, until paid."

Based upon this contract provision, the arbitrators concluded that CGB was owed attorney fees, costs and interest under the contractual provisions binding the parties. CGB's attorneys, as part of CGB's first argument, submitted copies of invoices showing fees and costs of $48,148.64 as of Nov. 13, 1998. CGB's attorneys, as part of CGB's rebuttal, represented that an additional $2,750 in attorney fees and costs had been incurred. The arbitrators concluded that the attorney fees and costs incurred by CGB were reasonable and necessary given the facts and procedural history of this case. Therefore, CGB was awarded attorney fees and costs of $50,898.64.

The arbitrators concluded that CGB also was entitled to compound interest at the rate set forth in the contract, which was 1½ percent per month (18 percent per annum). Interest on the market damages should run from Nov. 1, 1995, the day after the end of the stated delivery period. Interest on the award of attorney fees and costs should accrue from Aug. 1, 2000, if not paid within the time period set forth below.

The Award

It hereby is ordered that:

- Consolidated Grain and Barge Co. is awarded judgment against Scott Tegeler in the amount of $47,250 on its claim for market damages resulting from the breach of contract. Compound interest on the foregoing sum shall accrue at the rate of 18 percent per annum from Nov. 1, 1995 until all sums are paid.

- Consolidated Grain and Barge Co. is awarded attorney fees and costs against Scott Tegeler in the amount of $50,898.64, with no interest being due if paid in full within 15 days of the date of receipt of this decision by defendant and/or his counsel. If not paid within that period, compound interest at the rate of 18 percent per annum shall be deemed to accrue from Aug. 1, 2000 until all sums are paid.

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

Dean P. O'Harris, *Chairman*
Commodity Manager
Parrish & Heimbecker Inc.
Oxford, Mich.

Scott Mills
Feedgrains Manager
Lansing Grain Co.
Overland Park, Kan.

Bradford A. Schultz
Vice President, Commodities
Minnesota Corn Processors
Marshall, Minn.

[5] *NGFA Grain Trade Rule 41 [now Grain Trade Rule 4] provided that "[t]he 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 by both in writing."*