Arbitration Decision
National Grain and Feed Association

July 15, 1999

Arbitration Case Number 1822©

Plaintiff: Champaign Landmark Inc., Urbana, Ohio

Defendant: Merryl E. Runyan, Ruth Runyan and Mark Runyan; dba Oakview Farms, Urbana, Ohio

Statement of the Case

This case involved the sale of cash wheat and corn by the defendant, Oakview Farms (Oakview), an Ohio farm partnership, to the plaintiff, Champaign Landmark Inc. (Landmark), an Ohio agricultural cooperative association. Landmark sought judgement on its claim against Oakview and each of its individual partners (Merryl Runyan, Ruth Runyan and Mark Runyan), jointly and severally. The case was arbitrated pursuant to a court order[1] issued by the Court of Common Pleas of Champaign County, Ohio.

Landmark claimed that Oakview failed to deliver 3,088.29 bushels of wheat covered under Landmark purchase contract number 2212 (#22212), 30,000 bushels of corn covered under Landmark purchase contract number 2674 and 20,000 bushels of corn covered under Landmark purchase contract number 7203. All three of these purchase contracts were hedge-to-arrive (HTA) contracts in which the Chicago Board of Trade (CBOT) futures reference prices were established at the time the contracts were initiated. The final cash basis was not established at the inception of the HTAs, and each contract had terms defining the final basis pricing date. All of the contracts also had a specified shipment period for the grain covered by each agreement. Landmark sought damages of $101,484.25, plus interest at the rate of 24 percent from Aug. 1, 1998, as well as attorney fees and costs.

In contrast, Oakview and the individual defendants disputed the NGFA's jurisdiction to decide the dispute. They asserted that the trade rules and arbitration provisions on the reverse side of the Landmark contract confirmations were not provided to them when they entered into the contracts. The defendants also requested that the arbitrators dismiss Merryl Runyan, Ruth Runyan and Oakview farms as parties to the arbitration. They contended that all transactions were between Mark Runyan, individually, and Landmark, rather than Oakview and Landmark. The defendants also claimed that it was Landmark that breached the contract when the cooperative in May 1996 unexpectedly changed the way it offered the HTA program to grain producers. In addition, the defendants contended that Landmark created the impression that there always would be trading features available to the farmer to use. Oakview said that the inability to use these features caused the defendants to lose control over their commodities and suffer losses that could have been averted. Oakview also claimed that Landmark acted in bad faith and engaged in unfair dealing and fraudulent and deceptive conduct. Finally, Oakview contended that the HTA contracts may not have qualified as cash forward contracts under the Commodity Exchange Act. The following is a description of the facts pertaining to each of the contracts:

HTA Contract Number 2212 (#22212):

Landmark contract number 2212 was written with Oakview on Oct. 18, 1994 for 5,000 bushels of wheat, with a CBOT futures reference price of $4.04 using March 1995 CBOT reference month. The contract specified that the basis was to be established or the contract "rolled" by Feb. 28, 1995, and that the basis was to be established prior to delivery. The time of shipment on the contract was July 1995.

HTA contract number 2212 was rolled forward on Feb. 21, 1995. The futures reference month was changed to the July

[1] *Champaign Landmark Inc. was and is a NGFA Active member. The defendants were not members. The court's order was based on an arbitration clause contained in the parties' contracts. The trial court's order was affirmed by an Ohio appellate court in Champaign Landmark, Inc. v. Merryl E. Runyan, et al., Case No. 97 CA 30 (Ohio 2d App. Dist. 1998).*

1995 CBOT futures, and the futures reference price was adjusted to $3.8975 per bushel. The shipment period – July 1995 – was left unchanged. The amendment also required that the basis be priced or the contract rolled by June 30, 1995.

Sometime prior to June 28, 1995, Oakview delivered 1,414.02 bushels of wheat against HTA contract number 2212. There was no documentation by either party as to the basis established on a confirmation of the basis pricing. On June 28, 1995, Landmark issued a confirmation of a second amendment to the agreement rolling 3,585.98 bushels of wheat forward with a shipment period of September/October/November 1995. The futures reference month was changed to September 1995 and the futures reference price was changed to $3.9375 per bushel. The amendment also stated that the basis must be priced or the contract rolled by Aug. 30, 1995.

HTA contract number 2212 was rolled two more times: on July 10, 1995 and Feb. 28, 1996. These rolls resulted in the shipment period ultimately being May 1996 and the futures reference price and reference month of $3.8425 May 1996 futures.

It appeared that on April 26, 1996, the contract was split into two parts. Two thousand bushels were rolled forward with a shipment period of July/August 1997 and a futures reference price and reference month of $2.7825 December 1996 futures. The remaining 1,585.98 bushels were rolled forward with a shipment period of July 1996 and a futures reference price and reference month of $2.8625 July 1996 futures.

In the June/July 1996 time period, Oakview again delivered wheat against HTA contract number 2212. It appeared that 497.69 bushels were delivered, leaving a balance of 1,088.29 bushels, which were then rolled forward with a July/August 1996 shipment period (no change in shipment period) and a futures reference price and month of $2.9125 December 1996 futures. On Aug. 15, 1996, these 1,088.29 bushels were combined with the 2,000 bushels that were rolled to the December futures on April 26, 1996 to amend the contract to 3,088.29 bushels on HTA contract number 22212 (new number) with an adjusted CBOT futures reference price and month of $2.8283 December 1996 futures and a shipment period of July/August 1997 (the next harvest season).

HTA contract number 22212 was amended and rolled forward on Nov. 26, 1996. The shipment period remained July/August 1997, with the CBOT futures reference price and month now $2.6183 March 1997 futures.

Subsequently, on Feb. 28, 1997, Landmark sent a letter to Merryl E. Runyan, Oakview Farms, informing him that Landmark had "cashed out" contract number 22212 at the close of business on Thursday, Feb. 27, 1997 and charged the sum of $3,433.25 to Oakview's account, itemized as follows:

- Contract Price of $2.6183 vs. Current Market Price (2/27/97) of $3.68 equaled $1.0617 difference;
- Less 5-cent contract cancellation fee equals a total of $1.1117 per bushel due;
- Thus, 3,088.29 bushels at $1.1117 = $3,433.25 due Landmark.

HTA Contract Number 2674:

Landmark contract number 2674 was written with Oakview on March 13, 1995 for 20,000 bushels of corn with a CBOT futures reference price of $2.52 using December 1995 as the CBOT reference month. The contract specified that the basis was to be established or the contract "rolled" by Nov. 30, 1995, and that the basis was to be established prior to delivery. The time of shipment on the contract was December 1995.

Landmark on Nov. 30, 1995 issued an amendment to HTA contract number 2674 that combined bushels from the original contract number 2674 (20,000 bushels) and HTA contract number 5557 (10,000.00 bushels). This amendment also "rolled" the shipment period and futures reference price and month forward. The shipment period was amended to be March 1996, and the CBOT futures reference price and month were amended to $2.7033 March 1996 futures. The contract was to be priced or rolled by Feb. 29, 1996.

On Feb. 28, 1996, Landmark issued another amendment to HTA contract number 2674, confirming the roll to Fall 1996 shipment period and amending the CBOT futures reference price and month to $2.6783 May 1996 futures. The contract was to be priced or rolled by April 30, 1996.

Landmark on April 25, 1996 issued another amendment to HTA contract number 2674. This amendment confirmed the roll to the CBOT futures reference price and month of $2.4833 July 1996 futures. The contract was to be priced or rolled by June 28, 1996. This amendment contained conflicting shipment dates. One reference was to July 1996 shipment; another indicated "Fall 1996 Intended Delivery."

Subsequently, on June 27,1996, Landmark issued a final amendment to HTA contract number 2674. This amendment confirmed the roll to "Fall 1996 Delivery" for the shipment period and amended the CBOT futures reference price and month to $0.5683 December 1997 futures. The contract was to be priced or rolled by Nov. 27, 1997, with the basis to be set prior to delivery.

On July 29, 1997, Landmark's attorney sent a letter to Oakview's attorney indicating that Oakview contract numbers 2674 and 7203 were in default of delivery pursuant to the agreement between the parties. The letter also stated that Landmark would "cash out" these contracts on Friday, Aug. 15, 1997 unless the parties reached some agreement relative to Oakview's failure to deliver.

On Aug. 15, 1997, Landmark sent a letter to Merryl E. Runyan, Oakview Farm, informing him that HTA contract number 2674 had been "cashed out" at the close of business on Friday, Aug. 15, 1997. Landmark charged Oakview's account for $63,801 on the cancellation, itemized as follows:

- Contract Price of $0.5683 vs. Current Market Price (8/15/97 12:00 Noon) of $2.6450 equaled $2.0767 difference;
- Less 5-cent contract cancellation fee equals a total of $2.1267 per bushel due;
- Thus, 30,000 bushels at $2.1267 = $63,801 due Landmark.

HTA Contract #7203

Landmark contract number 7203 was written with Oakview on Dec. 20, 1995 for 15,000.00 bushels of corn with a CBOT futures reference price of $2.8975 using July 1996 as the CBOT reference month. The contract specified that the basis was to be established or the contract "rolled" by June 30, 1996, and that the basis was to be established prior to delivery. The time of shipment on the contract was July 1996. In the remarks section, the contract also contained the statement: "3 290 July Calls Exercised Less ¼¢ From Option Roll." It appeared, based upon documentation contained in Landmark's evidence, that this contract was initiated because of the exercise of an options position on HTA contract number 2674.

On Dec. 27, 1995, Landmark issued a confirmation that amended HTA contract number 7203 to reflect a total of 20,000 bushels (an additional 5,000 bushels); in the remarks section were inserted the phrases "[r]eplaces contract dated 12/20/95" and "1 more July 290 Call Exercised 12/27/95". All other terms, as well as the price, of the contract were unchanged from the original contract.

On June 27, 1996, Landmark issued a confirmation that amended HTA contract number 7203 by rolling the shipment period forward to Fall 1997 delivery. The amendment also changed the CBOT futures reference price and month to $0.9825 December 1997 futures. The amendment provided that the basis must be priced or the contract rolled by Nov. 27, 1997.

On July 29, 1997, Landmark's attorney sent a letter to Oakview's attorney indicating that Oakview contract numbers 2674 and 7203 were in default of delivery pursuant to the agreement between the parties. The letter also stated that Landmark would "cash out" these contracts on Friday, Aug. 15, 1997 unless the parties reached some agreement relative to the failure to deliver by Oakview.

Thereafter, on Aug. 15, 1997, Landmark sent a letter to Merryl E. Runyan, Oakview Farm, informing him that HTA contract number 7203 had been "cashed out" at the close of business on Friday, Aug. 15, 1997. Landmark charged Oakview's account $34,250 for the cancellation, itemized as follows:

- Contract Price of $0.9825 vs. Current Market Price (8/15/97 12:00 Noon) of $2.6450 equaled $1.6625 difference;
- Less 5-cent contract cancellation fee equals a total of $1.7125 per bushel due.
- Thus, 20,000.00 bushels at $1.7125 = $34,250.00 due Landmark.

Landmark claimed that it entered into these HTA contracts with Oakview based upon the fact that the trade was made subject to NGFA Trade Rules in effect at the time of the trade. Landmark's confirmations also contained a provision referencing the "Arbitration Rules of the National Grain and Feed Association." Landmark stated that it followed the provisions of NGFA Grain Trade Rules 6(a), 6(c) and 10. Landmark also contended that Oakview did not deliver as contracted, was in default and thus was liable for damages. Landmark sought damages arising from the three previously noted contract cancellations totaling $101,484.25, plus interest at a rate of 24 percent annually from Aug. 1, 1998, as well as attorney fees and other costs.

The Decision

The arbitrators found that the parties entered into these contractual agreements willingly and agreed to the original terms and conditions.

As to whether arbitration – and more specifically NGFA arbitration – applied, the arbitrators concluded that the terms of the contracts were very clear. Each of Landmark's contract confirmations provided on the front page that: "THE TERMS AND CONDITIONS CONTAINED ON THE REVERSE SIDE HEREOF ARE AN INTEGRAL PART OF THIS CONTRACT." Importantly, paragraph 3 on the reverse side provided:

"Seller and Buyer agree that all disputes and controversies of any nature whatsoever between them with respect to this contract shall be arbitrated according to the Arbitration Rules of the National Grain and Feed Association, and that the decision and award determined thereunder shall be final and binding on Seller and Buyer."

These contract terms and the court order[2] to arbitrate provided the arbitrators with the jurisdiction and authority to decide the issues raised by all parties in this case.

The arbitrators, after reviewing the evidence submitted, concluded that the contracts were entered into between Landmark and the partnership known as Oakview Farms. This also was the decision reached by the trial and appellate courts considering the issue of whether the claims in this case were subject to NGFA arbitration. Indeed, the appellate court said that:

"Undisputed evidence shows that Mark Runyan was a partner in the business known as Oakview Farms, or at the very least he was its agent. As such, he had the authority to bind his parents – who were co-owners of the farm – to a contractual obligation."

Thus, all of Oakview's partners (Merryl E. Runyan, Ruth Runyan and Mark E. Runyan) were properly included as defendants in this case. There was no written evidence that the Oakview Farms partnership had ever been dissolved. Nor had Oakview notified Landmark in writing that its account should be closed because of changes in the operation of the Runyan farm operations.

[2] *The three-judge appellate court panel examined this question in detail and said that, "[t]he policy under both Ohio law and federal law is to encourage resolution of claims through arbitration." The court found that all of the claims asserted by the defendants against Landmark also were arbitrable.*

Since this case involved three separate contracts between the parties, the arbitrators determined that NGFA Grain Trade Rule 43 applied. Grain Trade Rule 43 provides that: "*Failure to perform in keeping with the terms and conditions of a contract shall be grounds for the refusal only of such shipment or shipments, and not for the recision of the entire contract or any other contract between Buyer and Seller.*" This being the case, the arbitrators analyzed the parties' performance on a contract-by-contract basis.

HTA Contract Number 2212 (#22212)

Landmark issued the last contract amendment confirmation on this contract on Nov. 26, 1996. This amendment provided for delivery of the grain during "July/August 1997." Landmark canceled this contract on Feb. 28, 1997, well in advance of the stated delivery period. No evidence was presented by either party to show that a legitimate reason existed to cancel the contract before the required delivery period. Landmark claimed it canceled this contract under the provisions of NGFA Grain Trade Rule 10. Nevertheless, the NGFA Trade Rules do not permit the buyer to cancel a contract or buy-in bushels to fill a contract until there is a default or a statement by the seller indicating an inability or unwillingness to deliver the grain covered by the contract. Landmark stated that Oakview did not deliver and did not advise Landmark of an inability to deliver. The evidence submitted failed to provide any reason justifying cancellation in advance of the stated delivery period. The HTA contract did have a pricing or roll date of Feb. 27, 1997. In other words, the contract should have had the basis established or rolled forward before that date. However, this pricing deadline did not provide Landmark a reason to "buy-in" the contract for failure to deliver based upon the evidence presented. There was no written communication between the parties to show any other reason for contract cancellation or default by the seller.

Consequently, the arbitrators concluded that Landmark prematurely canceled the contract without providing proper notice to Oakview. Therefore, Landmark's claim on HTA contract number 2212 (22212) was denied. Oakview and its partners have no further obligations to Landmark on this contract.

HTA Contract Number 2674:

HTA contract number 2674 was initiated as a simple HTA agreement with 20,000 bushels of corn contracted for delivery in December 1995. But that is where the simplicity ended.

There were several options positions referred to on the contract and amendment confirmations. Neither party (Landmark or Oakview) provided much information about these option positions and how they worked. There were no written confirmations or sales tickets to show how the proceeds or cost of the embedded options were handled. Indeed, it appeared to the arbitrators that the parties were engaged in buying and selling call and put options under the terms of contract number 2674.

The arbitrators carefully analyzed the basic provisions of the HTA terms and the submitted evidence. The final amendment to HTA contract number 2674 was written on June 27, 1996. The amendment called for 30,000 bushels of corn to be delivered "Fall 1996" to Urbana, Ohio.

As indicated previously in the Statement of the Case, Landmark's attorney did provide Oakview notice of default on the delivery of the grain covered by HTA contract numbers 2674 and 7203. Thereafter, on Aug. 15, 1997, Landmark "cashed out" HTA contract number 2674 at $2.6450. This seemed to be an extended period of time from the required delivery period, but Landmark nonetheless provided notice of default and allowed Oakview approximately two weeks to satisfy the contract requirements. Therefore, the arbitrators found that Landmark substantially, and in good faith, complied with the provisions of NGFA Grain Trade Rule 10 on this contract.

The arbitrators deliberated at length over the fact that the parties to HTA contract number 2674 traded 23 contracts of options under the umbrella of this HTA contract. Oakview sold four July $2.40 call options on March 13, 1995 and liquidated the position on May 15, 1995. Oakview on May 15,1995 bought five July $2.60 call options and liquidated four contracts on June 6,1995 and one on June 15,1995. Oakview on May 25, 1995 sold four December $2.70 calls and then liquidated them on Oct. 24, 1995. Oakview on July 12, 1995 bought six December $2.70 puts (it appeared that these expired worthless). And finally, Oakview sold four July $2.90 calls on Oct. 24,1995 that were the basis for a new HTA contract (number 7203). These options trades represented 115,000 bushels of corn. There were no terms or conditions that called for the physical delivery of at least 95,000 bushels of these trades based on the evidence submitted.

While the arbitrators were troubled by the parties' option trading, it also was clear that **both** parties to this HTA contract agreed to enter into this series of transactions, where options positions were bought or sold and later offset without being expressly tied to the physical delivery of any corn. At a minimum, both parties acted imprudently in allowing their conduct to near-the-line or cross-the-line from a permissible forward contract to an impermissible off-exchange option. However, their conduct was mitigated by the fact that the parties began with a transaction that clearly contemplated physical delivery.

Notwithstanding the concerns outlined above, the arbitrators agreed that Landmark did, in good faith, contract for the purchase and delivery of the 30,000 bushels of corn covered by the original HTA contract(s). Landmark also suffered a loss because of Oakview's default (failure to deliver) on that 30,000-bushel quantity. Oakview clearly tried to "solve" its contractual problems by ignoring Landmark's attempts to communicate on this issue. This was not the proper way to resolve a trade dispute under either the NGFA Trade Rules or general commercial practice. Moreover, **both** parties erred when they began to trade options that were not clearly tied to the physical delivery of cash grain.

Based upon the evidence presented, the arbitrators determined that **both** parties to HTA contract number 2674 were at fault on the options portion of this contract. Therefore, the arbitrators found that Landmark should bear 50 percent of the cost of the overall losses incurred on this contract. The arbitrators reduced Landmark's base claim for damages of $63,801 on this contract to $31,900.50, plus interest at a rate of 7.5 percent per annum from Aug. 15, 1997 until paid in full. The balance of Landmark's claim on this contract was denied.

HTA Contract Number 7203:

Documentation provided by Landmark showed that HTA contract number 7203 originated from part of the options position of HTA contract number 2674. The final amendment confirmation of HTA contract number 7203 dated June 27, 1997 (pre-trial exhibit A) showed: that Oakview was obligated to deliver 20,000 bushels of corn to Urbana, Ohio, during "Fall 1997," that the contract provided for the basis to be priced or rolled forward by Nov. 27, 1997; and that the "basis must be set prior to delivery."

As indicated previously in the Statement of the Case, Landmark's attorney did provide Oakview notice of default on the delivery of the grain covered by HTA contract numbers 2674 and 7203. Landmark on Aug. 15, 1997 "cashed out" HTA contract number 7203 at $2.6450. This was well in advance of the required delivery period stated in the terms of the contract (Fall 1997). There was no evidence provided by either party as to any other factors or reasons for this Aug. 15, 1997 cancellation. Clearly, Oakview was not in default because of failure to deliver, since the specified delivery period was in the future. Landmark claimed that it canceled this contract pursuant to NGFA Grain Trade Rule 10. But there is no provision within the NGFA Trade Rules that permits the buyer to cancel a contract or buy-in bushels to fill a contract until there is a default or a statement by the seller of an inability or unwillingness to deliver the grain covered by the contract. Landmark stated that Oakview did not deliver and did not advise Landmark of an inability to deliver. The submitted evidence failed to provide a legitimate reason for cancellation prior to the stated delivery period.

The arbitrators concluded from the submitted evidence that Landmark prematurely canceled the contract. Consequently, the arbitrators denied Landmark's claim for damages of $34,250 asserted against the defendants on HTA contract number 7203. Oakview and its partners have no further responsibility to Landmark on this contract.

Other Conclusions

It should be noted that Oakview claimed, among other things, that Landmark breached these contracts because of changes in Landmark's HTA program after the initial contracts were written. The arbitrators rejected this reasoning. Only the contract terms stated on the original contract or subsequent amendments that were agreed to between the two parties were enforceable under NGFA Grain Trade Rule 41. This also was the case under general commercial contract principles. Landmark's failure, where indicated, to follow proper procedures under NGFA Grain Trade Rule 10 and uncertainties regarding delivery obligations on HTA contract number 2674 constituted the basis for the arbitrators' decision to deny the majority of Landmark's claims asserted in this case.

Oakview contended that none of these contracts were enforceable. Notwithstanding concerns over the series of trades that the parties conducted on HTA contract number 2674, the arbitrators concluded that all of the contracts began as legitimate cash forward contracts with delivery obligations.

The arbitrators found that both Landmark and Oakview shared responsibility for the questionable options-related trading that occurred on HTA contract number 2674. Both were at fault based upon the evidence presented in this case.

The Award

Therefore, it was ordered that:

- Champaign Landmark Inc. is awarded a judgment against Oakview Farms, Merryl E. Runyan, Ruth Runyan and Mark Runyan, jointly and severally, in the amount of $31,900.50, plus compound interest at the rate of 7.5 percent per annum from Sept. 15, 1997 until paid in full;
- Each party is to pay its respective attorney fees and costs; and
- All other claims asserted or assertable by the parties in connection with these contracts are denied.

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

William Bluml, *Chairman*
Assistant Merchandising Manager
West Central Cooperative
Ralston, Iowa

Roger Fray
Grain Merchandising Manager
Ray-Carroll County Grain Growers Inc.
Richmond, Mo.

Jeff Edwards
J & J Commodities LLC
Greenville, N.C.