Arbitration Decision
National Grain and Feed Association

July 15, 1999

Arbitration Case Number 1823©

Plaintiff: Champaign Landmark Inc., Urbana, Ohio

Defendant: Steve Robinson, Marysville, Ohio

Statement of the Case

This case was initiated by the filing of a complaint[1] by Champaign Landmark Inc. (Champaign), Urbana, Ohio, alleging that Steve Robinson[2] (Robinson), Marysville, Ohio, failed to deliver 10,000 bushels of wheat and 84,750.71 bushels of corn pursuant to the terms of three hedge-to-arrive (HTA) contracts[3]. Champaign alleged damages in the amount of $219,272.08 for market differences associated with contract cancellations plus interest for financing the losses, as well as costs and attorney fees.

Champaign stated that the terms of the contracts and the subsequent amendments required delivery of a specific quantity of grain during a set time period for a specified price. Robinson contended that Champaign changed its policy with regard to hedge-to-arrive contract notifications, thereby expressly altering the terms of the contracts in violation of NGFA Grain Trade Rule 41. Further, Robinson argued that the contracts did not constitute legal hedge-to-arrive contracts under recent rulings by the Commodity Futures Trading Commission (CFTC).

Champaign and Robinson began entering into HTA contracts in July 1994, and continued to do so for the next two years. Champaign sent to Robinson signed written confirmations of each HTA contract and amendments to the contracts. The contracts required the basis to be set prior to delivery and permitted rolling. However, Robinson understood that a maximum two-year delivery period was part of each contract[4]. Robinson signed all of the initial contract confirmations. On contract number 6005 for wheat, Robinson signed the confirmation the first five of seven times it was rolled. Contract number 167 was rolled six times and Robinson signed all but the last amendment to this contract. On contract number 2516, Robinson signed four of the rolls, but failed to sign two.

Champaign took action to cancel the contracts as follows:

- **Contract number 6005**, involving 10,000 bushels of wheat (5,000 bushels intended for September 1996 delivery, with the balance for August 1997 delivery), was cancelled on Feb. 28, 1997; Stated Reason: Robinson failed to price or roll the contract by Feb. 2, 1997; Base Market Damages Claimed: $13,350.

- **Contract number 167**, involving 4,750.23 bushels of corn for Fall 1996-March 1997 delivery, was canceled on Aug. 15, 1997; Stated Reasons: Robinson failed to deliver and failed to provide any assurance of delivery; Base Market Damages Claimed: $8,670.08.

- **Contract number 2516**, involving 80,000 bushels of corn (40,000 bushels to be delivered Fall 1996-March 1997, with the balance for Fall 1997-March 1998 delivery), was canceled on Aug. 15, 1997; Stated Reasons: Robinson failed to price or roll the contract by Nov. 27, 1997, and failed to deliver and failed to provide any assurance of delivery; Base Market Damages Claimed: $197,152.

Champaign invoiced Robinson on Feb. 28, 1997 for amounts sought on contract number 6005, and invoiced Robinson on Aug. 15, 1997 for amounts sought on contract numbers 167 and 2516. A letter containing a breakdown of how the market differences were calculated accompanied each invoice[5]. Champaign's cover letters also stated that "[p]ayment due upon receipt of invoice."

The Decision

This dispute was particularly unfortunate because the evidence submitted in the case showed that Champaign and Robinson had a long history of successful trading in cash grain. All of the contracts in this dispute clearly provided that both the NGFA Trade Rules and the NGFA Arbitration Rules were applicable. The arbitrators agreed with the trial court judge referring this case to NGFA arbitration, who said that:

"[R]easonable minds cannot differ on the question of whether the arbitration clause was included in the contracts. All matters of defense raised by the defendant are matters relating to controversy about the contract and arbitration as the

required contractual means of dealing with controversies in this case."

Robinson, in a deposition taken in connection with this case, said that he grew grain for sale and sold the grain with the intention of delivery. Therefore, the arbitrators believed that Robinson knew that he had obligated himself to deliver grain when he contracted with Champaign. Robinson claimed that he notified Champaign in October 1996 that he "was suspending all activities with them." However, the arbitrators found insufficient evidence of communication and no evidence of follow-up or remedy.

The arbitrators concluded that both parties entered into the contracts for the eventual purpose of delivery and sale of grain that had been produced by Robinson. The contracts were valid cash grain contracts containing delivery obligations, shipment periods and specified delivery locations.

When Robinson failed to sign some of the confirmations, he also failed to indicate either agreement or disagreement with the terms set forth. NGFA Grain Trade Rule 6(a) provides that:

*"(a) **Confirmation**: It shall be the duty of both Buyer and Seller, not later than the close of the business day following the date of trade, to send a written confirmation, each to the other....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 by written communication, except in the case of differences in minor character, in which event, notice by written communication will suffice."*

The consequences of failing to comply with Rule 6(a) are set forth clearly in NGFA Grain Trade Rule 6(c), as follows:

"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 described in 6(a), of any disagreement with the confirmation received."

The arbitrators also noted that the so-called amendments involved a series of transactions on each contract, which were contemplated by both parties from the outset. The conduct of both parties demonstrated an expectation that matters such as pricing, rolling and setting basis were events routinely handled by oral agreement, with written confirmation from Champaign to follow. Thus, the parties were carrying out the specifications of each contract rather than amending the substance of the contract.

The NGFA Grain Trade Rules provide specific remedies when parties to a contract are in disagreement and delivery is not forthcoming. Champaign obligated itself to Robinson, at his request, and was entitled to be made whole on any reimbursement for breach of contract. The arbitrators found that Champaign correctly followed NGFA Grain Trade Rule 10 by canceling the contracts when it became clear that delivery would not be forthcoming. The submitted evidence included letters from Champaign's attorney to Robinson's attorney providing notice prior to cancellation of the contracts. Champaign was entitled to reimbursement for the resulting losses.

Money has value over time. The more complex the business, the greater the risks. The intentions of the parties in this dispute, once the initial contracts were written and signed, became less clear over time. Rolling a hedge-to-arrive contract can involve complex determinations. The arbitrators concluded that Champaign should bear a substantial portion of the financing cost as the price for dealing in and administering these contracts under the facts of this case. The arbitrators concluded that Champaign did not show a valid contractual basis for assessing finance charges of 24 percent per annum under the facts presented.

The Award

Therefore, it was ordered that:

Champaign Landmark Inc. is awarded judgment against Steve Robinson in the amount of $219,272.08, plus compound interest at the prime rate of 7.75 percent[6] from Jan. 1, 1999 until paid in full.

Each party is to pay its respective costs and attorney fees.

All other claims asserted or assertable by the parties in connection with these contracts are denied.

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

Charles Kemper, *Chairman*
Grain Merchandiser, Eastern Region
Terra International Inc.
Sioux City, Iowa

Brent Roggie
General Manager
Lowville Farmers Co-op
Lowville, N.Y.

Michael Sulzberger
Manager
Prairie Central Co-op Inc.
Chenoa, Ill.

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[1] This case also was referred to arbitration pursuant to a court order issued in Champaign Landmark Inc. v. Steve Robinson, Case No. 97 CV 74 (Champaign County, Ohio Court of Common Pleas, Dec. 18, 1997).

[2] Champaign Landmark Inc. was and is a NGFA Active member. Steve Robinson was not a NGFA member, but "operates a 900-acre corn, wheat, soybean grain farm near Marysville, Ohio."

[3] Contract numbers 6005, 167 and 2516.

[4] Robinson conceded this in deposition testimony submitted as part of the case.

[5] The amounts shown in the invoices represented the difference between the contract prices and the Chicago Board of Trade futures on the cancellation dates, plus a cancellation charge of 5 cents per bushel.

[6] This represents the average prime rate of interest for January 1999, as reported by the Board of Governors of the Federal Reserve System.