Arbitration Decision
National Grain and Feed Association

November 19, 1998

Arbitration Case Number 1878

Plaintiff: AGP Grain Ltd., Columbus, Ohio

Defendant: Victor McCall, Galloway, Ohio

Statement of the Case

This arbitration case was initiated by AGP Grain Ltd. (AGP) through a letter from its attorney dated Nov. 26, 1997. AGP, in its original complaint, asserted that Victor McCall had breached and failed to deliver on three contracts[1] involving a total of 4,000 bushels of corn. AGP initially sought damages totaling $7,240. Both parties[2] signed the National Grain and Feed Association Contract for Arbitration and paid the required arbitration service fees.

AGP, in its subsequent arguments filed in this case, asserted that Victor McCall on March 31, 1995 called AGP's Columbus, Ohio, facility and sold 2,000 bushels of U.S. No. 2 yellow corn for delivery in February/March 1996 at a price of $2.60 per bushel. McCall disputed that he had made the sale. Instead, McCall contended he had called AGP merely to check on current market prices. McCall's mother, Irene, who allegedly was in the room with her son at the time of the phone call, also indicated that the purpose of the phone call was to check prices.

AGP further contended that it mailed a written contract confirmation[3] on contract number 2431 to McCall in compliance with NGFA Grain Trade Rule 6, which also complied with Ohio law applicable to transactions between merchants. The contract confirmation expressly provided, in large print on the first page, that:

"IF THIS CONTRACT IS NOT IN ACCORDANCE WITH YOUR UNDERSTANDING, YOU MUST NOTIFY BUYER IMMEDIATELY. FAILURE TO DO SO CONSTITUTES ACCEPTANCE."

McCall denied ever receiving the contract confirmation.

AGP on Jan. 8, 1996 sent McCall a contract summary in which the contract in question was listed with several other contracts. McCall notified AGP by phone on Jan. 20, 1996 and by letter mailed on Jan. 24, 1996 that he believed the contract did not exist. AGP claimed damages of $2,420, plus interest at the rate of 10 percent per annum from Jan. 22, 1996.

The Decision

The arbitrators concluded that the parties did enter into a contract on March 31, 1995. AGP submitted evidence that McCall had done business with the company previously in the form of contract numbers 2365 and 2404 executed on March 7, 1995 and March 17, 1995, respectively. The defendant's trading history and other facts evidenced in the affidavit submitted by the grain merchandiser who dealt with McCall showed a relationship where the parties clearly should have understood the consequences of oral contract commitments made during telephone conversations.

The arbitrators also concluded that AGP submitted reliable evidence showing that a contract confirmation was generated and actually mailed to McCall within a reasonable time period

[1] Contract numbers 2365, 2404 and 2431.

[2] AGP was and is a NGFA Active member. Victor McCall, a grain producer in Galloway, Ohio, is not a member.

[3] The "Terms and Conditions" section of the contract confirmation included express provisions incorporating the NGFA Trade Rules.

after the oral contract was made. Thus, AGP complied with NGFA Grain Trade Rule 6(a) and general commercial law applicable to transactions between merchants. The arbitrators recognized that McCall denied receiving the confirmation. However, the arbitrators noted that the evidence (for example, other contracts showing the parties' trading relationship) tended to show that McCall was not in the habit of signing confirmations. Consequently, the fact that AGP did not receive a signed confirmation was not a good indication that McCall did not receive the contract confirmation.

While McCall's mother submitted an affidavit supporting the defendant's argument that the purpose of the telephone call referenced in this case was to obtain pricing information only, there was no evidence that she could hear what AGP's employee was saying to McCall. The arbitrators also noted that it was curious that Mrs. McCall's affidavit was submitted only after AGP's grain merchandiser first indicated in his affidavit that "McCall had another person in the room with him whom I could hear him address as 'mother' during the telephone conversation."

While the arbitrators concluded that a contract was formed, AGP's contractual follow up (or rather, lack thereof) certainly was not a model to be followed. First, the arbitrators concluded that AGP should have contacted McCall within days or weeks of mailing the contract confirmation. The evidence presented tended to indicate that AGP failed to have any contact with McCall regarding the contract for about nine months after sending the confirmation to him. While McCall's signature might not have been necessary to show the validity of the oral contract, it would have been a prudent business practice to contact this grain producer when he failed to return a signed confirmation within a reasonable time. Indeed, many companies have internal policies requiring merchandisers to obtain signed confirmations of deferred contracts within a specified time. Second, the mailing to customers of open contract statements on a regular basis, like the one mailed to McCall on Jan. 8, 1996, could have reduced – at a minimum – the likelihood for any real or imagined misunderstandings between the parties. Had AGP followed either practice, the arbitrators believed this problem may have been resolved significantly sooner and at a lower cost.

AGP's submissions showed that its claimed damages of $2,420 were based upon a prompt liquidation of the contract on Monday, Jan. 22, 1996, the first business day after Saturday, Jan. 20, 1996 (the date on which McCall first indicated his disagreement that a contract existed). AGP's actions were consistent with NGFA Grain Trade Rule 10.

The Award

While the arbitrators concluded that a contract was entered into by the parties, they also concluded that AGP's contract follow-up practices may well have contributed to the creation of this dispute. Consequently, the arbitrators concluded that the parties should share the responsibility for the resulting contractual damages claimed by AGP against McCall.

Therefore, AGP Grain Ltd. was awarded a judgment against Victor McCall in the amount of $1,210. No interest shall accrue or be due on the judgment if the defendant pays the judgment in full within 15 days of being notified of this decision. If the defendant fails to pay the judgment within that period, then compound interest shall accrue at the rate of 8 percent per annum from the date of judgment until paid in full.

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

Tim Andriesen, *Chairman*
Grain Merchandiser
Koch Agriculture
Wichita, Kan.

William B. Saunders
Director, Ingredient Procurement and Grain Operations
Murphy Family Farms
Rose Hill, N.C.

Don Seidl
Manager, Grain Marketing
B&W Co-op Inc.
Breckenridge, Mich.