Arbitration Decision
National Grain and Feed Association

May 6, 1999

Arbitration Case Number 1902

Plaintiff: The DeLong Co. Inc., Clinton, Wis.

Defendant: Phillip Brown d/b/a Northern Prairie Farms, Woodstock, Ill.

Statement of the Case

This dispute between the plaintiff, The DeLong Co. Inc. (DeLong), and defendant, Phillip Brown d/b/a Northern Prairie Farms (Brown), originated from the sale of 35,000 bushels of yellow corn from Brown to DeLong during May 1995.

The corn was committed for delivery through two separate hedge-to-arrive (HTA) contracts[1], with a delivery period of March 1996. However, Brown sold the corn during the 1995 harvest and did not have corn available for delivery to DeLong.

Subsequently, the parties revised the contracts during March-April 1996 to change the delivery period to December 1996 through March 1997. These revisions were included in a "Blanket Contract" agreement, which was signed by Phil Brown and dated April 18, 1996. The revised agreement also contained a list of "fees and charges," including interest, which would be assessable by DeLong for various contract-related actions.

Brown filed suit against DeLong and others in federal court[2] in August 1996 seeking, among other things, "compensatory damages, exemplary damages, injunctive relief, and any and all relief incident and subordinate thereto, including costs, on behalf of all farmers in the continental United States who have entered into hedge-to-arrive (hereinafter 'HTA'), flex, flex HTA, Minimum Price, Maximum Price, and Minimum/Maximum contracts and any other commodity futures or commodity options based contracts commonly known as a 'hybrid grain contract' (including rollovers and options bought or sold incident thereto)."

In response to the lawsuit, DeLong asked the court to order the matter to NGFA arbitration. U.S. District Court Judge Blanche M. Manning granted DeLong's motion to compel arbitration and stayed the court proceedings[3]. DeLong then initiated this arbitration case by complaint dated Jan. 21, 1998.

The Decision

Brown asserted, among other things, that the parties' dispute was not subject to NGFA arbitration and that "Brown is before the NGFA due to an incorrect ruling of the United States District Court for the Northern District of Illinois." The contracts provided the following in numbered item 7 on the first page:

"This transaction is made in accordance with the Trade Rules of the National Grain & Feed Association governing transactions in grain except as modified herein and both parties agree to be bound thereby."

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[1] *DeLong Contract Numbers 0277 and 0349.*

[2] *Phillip W. Brown, d/b/a Northern Prairie Farms v. ADM Investor Services Inc., et al., No. 96C5215 (N.D. Ill., Eastern Div., complaint filed Aug. 20, 1996).*

[3] *Id., amended memorandum and order nunc pro tunc Sept. 29, 1997 (Jan. 13, 1998).*

The arbitrators agreed with Judge Manning's conclusion[4] that this language bound both parties to NGFA arbitration pursuant to NGFA Grain Trade Rule 42, even where one party to the contract was not a NGFA member[5]. Thus, this case was properly before the NGFA pursuant to Section 3(a)(2) of the NGFA Arbitration Rules.

After thoroughly reviewing the contracts and all evidence submitted by both parties, the arbitrators reached the following conclusions:

- Brown and DeLong had an ongoing business relationship for several years prior to the dispute over these contracts.
- All contracts were properly executed and signed by both parties, which bound Brown to deliver 35,000 bushels of shelled corn to DeLong.
- Brown repudiated its contractual obligations and breached the contracts through various assertions made in the complaint filed in federal court. For example, page 34 of the federal court complaint contained the following statement: "Plaintiff on behalf of himself and all others similarly situated denies owing any obligation, whatsoever, to defendants under the hybrid grain contracts."
- DeLong complied with the NGFA Trade Rules and the parties' contracts when it bought-in the contracts upon receipt of the federal court complaint on Aug. 26, 1996.

NGFA Grain Trade Rule 10 provides a non-defaulting party (DeLong) the right to buy back the defaulted portion of the contracts for the account of the defaulting party (Brown). The total loss upon unwinding the contracts on Aug. 26, 1996 was $100,437.50. The loss consisted of the following aspects: $94,487.50 incurred in buying back the contracts; $4,200 in prior pricing adjustments for the minimum price portion of the HTA contracts; and $1,700 in contract cancellation charges at 5 cents per bushel[6].

Among other things, Brown contended that this case "arises from the fraudulent and deceptive activities of DeLong in the sale of certain hybrid contracts." The arbitrators concluded that the evidence submitted by the parties did not support Brown's contention. Likewise, the arbitrators concluded that the commodity adviser used by Brown was not DeLong's agent under any reasonable construction of the evidence submitted in this case. Indeed, the evidence showed that the commodity adviser was Brown's agent rather than DeLong's. If any "misrepresentations and omissions of material facts" were made by the commodity adviser, such were attributable to Brown. Moreover, the evidence showed that the commodity adviser was no longer being used by Brown when the revised agreement governing these contracts was entered into in April 1996.

DeLong sought additional damages against Brown pursuant to the provisions of the Wisconsin Grain Dealers Act. Specifically, that statute provides special remedies when a producer or depositor of grain fails to honor delivery commitments. These special remedies include recovery of "twice the amount of that person's proven damages, together with costs, including all reasonable attorney fees."

Both parties were bound by the express terms of the contracts and the revisions. DeLong was a Wisconsin grain buyer, but Brown was located in Illinois. While the parties' contracts did not refer to the Wisconsin Grain Dealers Act or any other Wisconsin law, the revised agreement provided that "all grain delivered under this H.T.A. program must be sold to The DeLong Co. Inc. and **delivered to a DeLong Co. Inc.-designated location.**" [Emphasis added.] The arbitrators concluded that this provision did not limit delivery under this contract to locations in Wisconsin. Accordingly, under the specific facts presented, the arbitrators denied DeLong's claim for special remedies under the Wisconsin Grain Dealers Act.

The Award

The arbitrators concluded that The DeLong Co. Inc. was entitled to prevail against Brown on its claims for damages and interest based upon the buy-in of the contracts on Aug. 26, 1996. All other claims arising from the subject contracts, and whether asserted or assertable by DeLong or Brown, were denied.

Therefore, it is ordered as follows:

- The DeLong Co., Inc. is awarded a judgment against Phillip Brown, d/b/a Northern Prairie Farms, in the amount of $100,437.50 for breach of contract and cancellation charges.
- Compound interest on the judgment amount of $100,437.50 shall accrue at the rate of 10.25 percent per annum[7] from Aug. 26, 1996 until all sums are paid in full.

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

Daniel W. Walski, *Chairman*
General Manager, Chief Executive Officer
Luckey Farmers Inc.
Woodville, Ohio

Jim Blackwell
Director of Commodities
Foster Farms
Fresno, Calif.

Rodney Schroeder
President and Chief Executive Officer
Aurora Cooperative Elevator
Aurora, Neb.

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[4] Judge Manning also concluded that "[Brown's] assertion that he has a right to commence a reparations proceeding before the CFTC is without merit in that defendant [DeLong] is not a registered entity. Further, 17 C.F.R. Section 12.24(c) provides that the right to such a proceeding before the CFTC is waived when the claimant commences a court action or arbitration proceeding."

[5] DeLong was and is a NGFA Active member. Brown, while appearing eligible for NGFA membership, was not a NGFA member.

[6] These contract cancellation charges were set forth clearly in the revised agreement dated April 18, 1996, which was signed by Brown.

[7] This represents 2 percent more than the average prime rate of interest for August 1996, as reported by the Federal Reserve Board of Governors.