National Grain and Feed Association
Arbitration Decision

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November 2, 2000

Arbitration Case Number 1969

Plaintiff: Commodity Specialists Co., Shawnee Mission, Kan.

Defendant: Double A Feeders Inc., Clayton, N. M.

Statement of the Case

This dispute centered on the meaning of gluten feed terms in a transaction between Commodity Specialists Co. (CSC), the plaintiff, and Double A Feeders Inc. (Double A), the defendant. CSC sought market damages against Double A for breach of contract arising from Double A's refusal to take delivery of all the commodity involved in the trade.

CSC on Feb. 23, 1998 sold 3,250 tons of corn gluten feed pellets to Double A through a broker.[1] The evidence submitted by the parties showed that the broker sent a single confirmation[2] describing the sale as "bulk corn gluten feed pellets—15% protein" at a price of $99 per ton, with the product to be "delivered to buyers [sic] yard" at the rate of "six hundred fifty tons per month April thru August 1998." CSC sent five separate confirmations[3] regarding the same transaction, each setting forth a separate delivery month and a quantity of 650 tons. The CSC confirmations referred to the commodity as "Gluten Feed." A representative of Double A signed and returned to CSC a copy of each CSC confirmation.

The evidence showed that CSC made delivery according to contract terms between April 6, 1998 and July 3, 1998 of 2,096.47 tons, and was paid by Double A pursuant to the contract at $99 per ton. Double A on June 18, 1998, sent a letter to the broker referencing an analysis by High Plains Laboratory Inc. of 22 corn gluten samples from delivered product. Double A expressed a concern that the ash content in approximately 80 percent of the samples was higher than recommended by various ingredient authorities[4]. There was no reference in the letter to protein, fat or fiber content. The broker forwarded this letter to CSC.

Double A on Aug. 3, 1998 refused delivery of a load of corn gluten feed pellets. Double A on Aug. 4, 1998 sent a letter by fax to CSC stating that "the product delivered to Double A Feeders did not meet analysis set by National Research Council and other widely accepted feed analysis standards....[w]e consider the contract with CSC void."

In response, CSC by letter dated Aug. 4, 1998 advised Double A that the product was guaranteed to be 15 percent minimum protein, 1.5 percent minimum fat and 10 percent maximum fiber. CSC said that "[t]hese guarantees were met....CSC must either receive shipping instructions or a fair market cancellation price." Later on the same day, CSC sent another letter advising Double A that it was "in default of contract. Under National Grain and Feed Association Rules, under which this contract was traded, you are obligated to respond within 24 hours to work out an acceptable option for delivery of this contract. In order to mitigate damages, CSC is willing to ship to alternate destinations, FOB the feed back, or work out a fair market value cancellation." Double A was advised that "[f]ailure to notify CSC of your intentions by 11:00 a.m. on August 5, 1998 will force us to sell the remaining tonnage for your account. All market losses will be for your account."

No evidence was submitted to show that Double A responded to the Aug. 4, 1998 letter from CSC. CSC on Aug. 25, 1998 advised Double A that CSC had determined a fair market value of $80 per ton delivered Clayton, N.M. CSC said this value was determined by a solicitation of bids in the market by the broker and an estimate from another industry firm. CSC submitted an invoice in the amount of $21,917.07 to Double A for payment.

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[1] *American Brokerage Co., Amarillo, Texas*

[2] *Contract number 8071.*

[3] *CSC confirmation numbers 62488 (April), 62490 (May), 62491 (June), 62492 (July) and 62493 (August).*

[4] *"On a dry matter bases, approximately 80% contained more than 10% ash and 2 samples over 13% ash." Double A contended that "[e]stimated ash of corn gluten should be approximately 7-8%....We assume that additional ash has no nutrient value and therefore request*

The Decision

The arbitrators thoroughly reviewed the evidence submitted by the parties concerning the express contract terms.

The broker's confirmation provided that "Association Trade Rules to govern as applicable on all commodities." The confirmations sent by CSC and signed by Double A expressly referenced NGFA Trade Rules on the front of the contract. In addition, the "Feed Trade Rules of the National Grain and Feed Association" also were referenced on the reverse side of each confirmation. Further, the commodity involved in the transaction was a feedstuff[5]. Thus, the transaction clearly was subject to the NGFA Feed Trade Rules.

Double A did not send out confirmations of the transaction. Thus, the confirmations sent by CSC were binding upon both parties per NGFA Feed Trade Rule 2(c).

NGFA Feed Trade Rule 1 provides a checklist of specifications trading parties should include in their contractual documents. Included in this list under Rule 1(c) are the "[k]ind and description (including quality) of feed." Neither the broker's confirmation nor the CSC confirmations addressed the ash content of the gluten feed. Neither party submitted any other evidence to show that ash content was part of the parties' agreement.

Evidence was submitted in the form of affidavits suggesting that corn gluten feed pellets generally trade on the basis of minimum protein and fat content, and maximum fiber content, with no reference to ash content. Double A did not request additional quality guarantees when it received either the broker's confirmation or the CSC confirmations. NGFA Feed Trade Rule 2(b) and 2(c) clearly made it Double A's responsibility to "immediately notify" both the broker and CSC if any terms set forth in the confirmations were either incorrect or incomplete. Failure to do so meant that Double A was bound by the terms set forth in the confirmations.

The arbitrators concluded that the contracts did not specify ash content of the pellets as a quality term of the transactions. Submitted affidavits and other evidence did not establish that ash content or other general pellet quality was standardized by trade practice in the industry. In fact, the affidavits tended to show that there was no industry standard for ash content. This made it especially important for Double A to make sure that ash content was an express term if it was a significant factor to Double A.

Therefore, the arbitrators concluded that Double A was not justified (under the express terms of the contracts or the NGFA Feed Trade Rules) in taking the unilateral action to void the contracts as was communicated in its Aug. 4, 1998 letter to CSC. Instead, the arbitrators found that CSC responded promptly and appropriately by pointing out to Double A Feeders that ash content was not guaranteed by contract or by standards of the trade. The arbitrators also concluded that CSC acted reasonably to mitigate damages when it sought to provide a remedy to the dispute by suggesting a contract cancellation per the NGFA Feed Trade Rules, as well as offering alternate delivery points.

The arbitrators found that Double A did not follow the NGFA Feed Trade Rules in its handling of the quality dispute. CSC complied with the contract terms and the NGFA Trade Rules in establishing market damages[6] of $21,917.07 when Double A breached the contract.

The arbitrators concluded that CSC also was entitled to interest on its damages pursuant to the terms specified in the parties' agreement. Each of the CSC confirmations provided as follows:

"Seller shall be entitled to collect from Buyer interest on any overdue amount owed by Buyer to Seller at a rate equal to three percent (3%) in excess of the prime rate of interest charged by the Chase Manhattan Bank of New York from the date said amount first became due or Buyer's liability first accrued until fully paid."

Therefore, the arbitrators found that CSC's claim for damages from Double A Feeders was reasonable and consistent with contract terms and the NGFA Trade Rules. Interest shall accrue from Aug. 25, 1998.

The Award

Therefore, it is ordered that:

- Commodity Specialists Co. is awarded a judgment in the amount of $21,917.07 against Double A Feeders, Inc.;
- Compound interest on the judgment shall accrue from at a rate 3 percent greater than the prime rate charged by the Chase Manhattan Bank of New York from Aug. 25, 1998 until all sums are paid in full; and
- Each party is to pay its own fees and costs.

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

Neill C. McKinstray, *Chairman*
Manager, Market Development and Transportation
The Andersons Inc.
Maumee, Ohio

Mark Green
President
Feed Services Inc.
Lubbock, Texas

Don R. Lowe
President
Lowe's Pellets & Grain Inc.
Greensburg, Ind.

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[5] *The preamble of the NGFA Feed Trade Rules provides that those rules apply to feedstuffs as defined by the Association of American Feed Control Officials. See also NGFA Feed Trade Rule 16.*

[6] *The original contract price of $99 per ton was applied to the outstanding undelivered tonnage of 1,153.53 tons, for a total of $114,199.47. The cancellation price was $80 per ton multiplied by 1,153.53 tons, for a total of $92,282.40. The total market damage of $21,917.07 was the*