National Grain and Feed Association

Arbitration Decision

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February 14, 2008

Arbitration Case Number 2158

Plaintiff: **ConAgra Trade Group Inc., Omaha, Neb.**

Defendant: **Pat Colson, Paxton, Neb.**

Statement of the Case

Based upon the submissions from the parties, the arbitrators established that the following series of events led to this dispute between the buyer-plaintiff, ConAgra Trade Group Inc., and the seller-defendant, Pat Colson:

- On Feb. 3, 2006, ConAgra and Pat Colson entered into a forward purchase contract (contract #7439) for 25,000 bushels of U.S. No. 2 yellow corn at a price of $2.30 per bushel. The contract provided for November 2006 delivery "F.O.B. the farm." The contract also stated "Rules to Apply: NGFA." This contract (#7439), which is the contract directly in dispute in this case, was signed by both ConAgra and Pat Colson.

- A separate contract (contract #7438) – also dated Feb. 3 for another 25,000 bushels of U.S. No. 2 yellow corn – was signed by ConAgra and Ed Colson. This contract (#7438) is not in dispute in this case.

- On Nov. 28, 2006, ConAgra and Pat Colson agreed upon a confirmation of contract amendment to roll contract #7439 from a November shipment to a December 2006 shipment. Both parties signed the amendment.

- On Dec. 7, 2006, in a recorded telephone conversation, the Colsons stated that they had no further intention of delivering on contract #7439.

- Also on Dec. 7, ConAgra sent a notice of contract default via certified mail to the Colsons demanding payment in the amount of $30,178.57, representing the market variance on the buy-in for the defaulted portion of the contract. ConAgra stated in its notice that it purchased futures at $3.715-per-bushel less the local basis of 0.205 cents per bushel, resulting in a net buy-back price of $3.51 per bushel. ConAgra alleged that payment was due on 24,940.97 bushels (25,000 minus 59.03 bushels applied from an overfill on a previous contract) multiplied by $1.21 per bushel (the buy-back price of $3.51 per bushel minus the original contract purchase price of $2.30), resulting in the claimed amount of $30,178.57. The arbitrators determined that the Colsons signed the certified mail receipt indicating that they received this notice on Dec. 8.

In support of its requested settlement of the claim in this case, ConAgra argued that NGFA Grain Trade Rule 28(A) [Seller's Non-Performance] applied to the default on forward purchase contract #7439. NGFA Grain Trade Rule 28(A) provides that upon receiving notice that a seller will not complete a contract, the buyer must either: 1) agree with the seller upon an extension of the contract; 2) buy-in for the account of the seller, using due diligence, the defaulted portion of the contract; or 3) cancel the defaulted portion of the contract at fair market value.

The Colsons claimed that they experienced problems while delivering corn in fulfillment of contract #7438 involving weighing, grading and licensing issues. The parties did not dispute their rights and obligations under contract #7438 in this case. However, the Colsons argued that their obligations to deliver under contract #7439 – which was the subject of the dispute in this case – ceased as the result of conversations and actions between the parties concerning the issues that they experienced while delivering under contract #7438.

The Decision

The arbitrators reached the following determinations:

1. Both parties entered into a binding forward purchase contract; both parties signed the contract; and the contract specifically provided that "Rules to Apply: NGFA."

2. NGFA Grain Trade Rule 28(A) [Seller's Non-Performance] applied to this dispute.

3. ConAgra properly notified the Colsons of the contract default and buy-in amount claimed.

4. The Colson's arguments concerning the weights, grading and licensing issues that allegedly occurred during delivery under contract #7438 did not void contract #7439, and they did not apply to the alleged contract default in this dispute.

5. Also applicable in this dispute was NGFA Grain Trade Rule 28(C), which states: "Failure to perform any of the terms and conditions of a contract shall be grounds only for the refusal of such shipment or shipments, and not for rescission of the entire contract or any other contract between the Buyer and the Seller."

The Award

Based upon the evidence presented, the correct buy-in price for the corn should be calculated using a futures price of $3.715 per bushel, minus a local basis of 0.30 cents per bushel (not 0.205), resulting in a net buy-back price of $3.415 per bushel. Consequently, the amount due to ConAgra was $27,809.18, representing 24,940.97 bushels multiplied by $1.115 (the adjusted buy-back price of $3.415 minus the original contract price of $2.30).

Therefore, the arbitrators awarded $27,809.18 to the plaintiff, ConAgra Trade Group Inc. The arbitrators declined to award interest or attorney fees.

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

James Erickson, *Chair*
General Manager
Fredericksburg Farmers Co-op
Fredericksburg, Iowa

Kim Dauch-Behr
Grain Manager
Advanced Agri-Solutions Co-op
Wapakoneta, Ohio

Rosalind Leeck
Manager
Demeter LP
Fowler, Ind.