



National Grain and Feed Association

Arbitration Decision

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January 13, 2011

Arbitration Case Number 2340

Plaintiff: Louis Dreyfus Corporation, Wilton, Conn.

Defendant: Mentone Agri-Center, LLC, Mentone, Ind.

Statement of the Case

In 2007 and 2008, Louis Dreyfus Corporation (LDC) purchased from Mentone Agri-Center, LLC (Mentone) under eight separate cash purchase contracts 50,200 bushels of U.S. No. 1 yellow soybeans for delivery to LDC's Claypool, Ind., soybean processing facility. All of the contracts included language calling for NGFA Trade Rules "To Govern."

The dispute between the parties arose in June 2008, when LDC acted to compel delivery of the soybeans by Mentone after the delivery period had lapsed on three of the contracts. Mentone maintained that LDC would not provide adequate assurance that Mentone would be paid promptly for the soybeans it delivered,

and until such assurances were given, no deliveries would occur.

In addition, there were five other outstanding contracts – one that called for delivery by Mentone in July 2008, three that called for delivery during the fall of 2008, and one that called for January 2009 delivery. The arbitrators determined that the issue presented was whether LDC was justified in cancelling the future delivery contracts, given the alleged default by Mentone to deliver on the three cash contracts.

LDC claimed damages of \$255,934.89 arising from the buy-in of the eight soybean contracts with Mentone. Mentone, in turn, counterclaimed that LDC owed it \$33,079.60 in damages.

The Decision

Mentone claimed that none of the eight confirmation of purchase contracts was signed by Mentone because it disagreed with the terms of those contracts as they had been prepared. Mentone consistently asserted in its arguments that payment terms for the soybeans delivered were not addressed in the contracts. Since the eight contracts were written over a seven-month period and all were printed on the same form, the arbitrators determined that Mentone had sufficient opportunity to attempt to incorporate payment terms into any of the subsequent contracts. Had it attempted to do so and found that LDC did not agree with those payment terms, Mentone would have had the option of not entering into additional written contracts with LDC.

Since Mentone did not provide any evidence of written objections to the terms of the LDC contracts or of any different contract terms existing between the parties, the arbitrators could rule only based upon the evidence that was presented in this case, which consisted of the agreements reached between the two parties – the LDC contracts. The arbitrators noted that NGFA Grain Trade Rule 3(A) is very specific in stating, in relevant part, that "**Both the Buyer and**

the Seller shall send a written confirmation, each to the other, not later than the close of the business day following the date of trade, or an agreed amendment, setting forth the specifications as agreed upon...."

Given that Mentone did not provide any documentation that it sent its own confirmations of the contracts or objections to LDC's confirmations, the arbitrators further relied upon NGFA Grain Trade Rule 3(B), which requires, in relevant part, that "***the confirmation sent by the other party will be binding upon both parties, unless the confirming party has been immediately notified by the non-confirming party...of any disagreement with the confirmation received.***" Mentone claimed that it contacted LDC by telephone that one of the contracts was erroneous; however, NGFA Grain Trade Rule 3(A) requires that telephone calls be confirmed in writing. Mentone did not provide to the arbitrators any support for such claimed communication.

The arbitrators concluded that if Mentone objected to the payment terms in the LDC contracts, it should have so notified LDC immediately; since it did not, the LDC contracts were in effect. If

there was any alteration mutually agreed upon by the buyer and seller after the original contract was completed, it should have been confirmed immediately by both parties in writing. For Mentone to unilaterally impose contract changes that were not agreed to by LDC would be inconsistent with NGFA Grain Trade Rule 4. Since the contract did not specifically address payment terms of the soybeans delivered, trade custom applied, as did NGFA Grain Trade Rule 24, which states, in relevant part, that “... *any cash balances accruing to the Seller on a shipment shall be remitted on a prompt basis to the Seller after the date of unload.*”

In this case, Mentone submitted an extensive list of companies with which it previously had transacted business, as well as their payment arrangements. If Mentone perceived that it was not being paid in a timely manner for grain that was delivered in comparison to its arrangements with the other entities, the usual approach according to normal trade custom would have been to claim payment of interest from LDC on those alleged late payments. Late payment on deliveries does not provide reason for a party to unilaterally revoke its contractual obligations.

Mentone further stated that LDC did not follow its own practice or normal trade practice in applying deliveries to the oldest open contract within the delivery period. The arbitrators noted that LDC did fill one of the contracts out of order (contract number 700831),

Contract Number	Contract Date	Delivery Period	Undelivered Bushels	Contract Price	Cancellation Price	Dollar Amount
700178	8/10/2007	Nov. 2007	1,275.64	\$ 8.94	\$ 15.80	\$ 8,750.89
700831	10/26/2007	Nov. 2007	5,000.00	7.10	15.80	43,500.00
700319	9/13/2007	Jan. 2008	7,000.00	9.36	15.80	45,080.00
700264	9/11/2007	Jul. 2008	1,200.00	9.33	15.80	7,764.00
700704	10/19/2007	Oct. 2008	12,000.00	9.43	14.80	64,440.00
701287	12/7/2007	Oct. 2008	10,000.00	10.01	14.80	47,900.00
702279	2/1/2008	Oct. 2008	5,000.00	11.95	14.80	14,250.00
701286	12/7/2007	Jan. 2009	5,000.00	10.16	15.01	24,250.00
						\$ 255,934.89

but it then paid Mentone for the difference in prices when the soybeans were reapplied in the proper order.

The arbitrators noted that LDC sent written correspondence to Mentone on June 16, 2008, requiring Mentone to contact LDC to arrange for delivery of 13,275.64 bushels of soybeans on three different contracts, and requiring Mentone to provide adequate assurance of performance on the contracts for future delivery. LDC again sent written correspondence to Mentone on June 24, stating that the contracts would be cancelled unless delivery was made by June 26. No documentation was presented to the arbitrators indicating that Mentone provided assurances to LDC that the soybeans would be delivered. Also, the five other contracts calling for future delivery of soybeans by Mentone remained in force. Since Mentone failed to provide assurance of delivery, the arbitrators concluded that LDC, by the exercise of due diligence, acted in accordance with the terms of NGFA Grain Trade Rule 28(A)(3) (“*cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.*”)

The contracts, delivery periods and prices are detailed below:

The Award

Based upon the information provided to the arbitrators, Louis Dreyfus Corporation was awarded judgment against Mentone Agri-Center, LLC for damages of \$255,934.89.

The counterclaim by Mentone Agri-Center for \$33,079.60 was denied.

Interest on the judgment was awarded at a rate of 5 percent per annum pursuant to NGFA Arbitration Rule 8(m), to accrue from the date of this decision until judgment is paid in full.

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

Jay Mathews, *Chair*
Grain Marketing Manager
Midwest Grain LLC
Bloomington, Ill.

David Fiebiger
Manager
Finley Farmers Grain & Elevator Co.
Finley, N.D.

Bart Moseman
Grain Division Manager
Farmers Cooperative Elevator Company
Hemingford, Neb.