



National Grain and Feed Association

Arbitration Decision

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October 3, 2013

Arbitration Case Number 2506

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: Randall Ag Ventures, Canistota, S.D.

Statement of the Case

This dispute involved 22 grain purchase contracts between the buyer, Cargill Inc. ("Cargill"), and the seller, Randall Ag Ventures ("Randall Ag").

Cargill claimed that Randall Ag failed to deliver to Cargill's grain elevators located in Emery and Vienna, S.D. the various quantities of corn, wheat and soybeans due under the purchase contracts as follows:

Contract Number	Contract	Bushels Contracted	Commodity
204706	03/09/07	25,000	Spring Wheat
204683	02/26/07	5,000	Spring Wheat
204554	01/16/07	40,000	Spring Wheat
203367	09/12/06	4,000	Spring Wheat
203366	09/11/06	15,000	Spring Wheat
47961	03/02/07	50,000	Winter Wheat
45802	09/12/06	20,000	Winter Wheat
45602	07/19/06	10,000	Winter Wheat
44635	03/30/06	100,000	Yellow Corn
44615	03/27/06	30,000	Yellow Corn
44550	03/23/06	25,000	Yellow Corn
44541	03/15/06	35,000	Yellow Corn
44529	03/14/06	8,000	Spring Wheat
44486	03/06/06	8,000	Spring Wheat
44114	01/23/06	25,000	Yellow Corn
44111	01/23/06	50,000	Yellow Corn
43892	12/16/05	350,000	Yellow Corn
43084	10/11/05	50,000	Yellow Corn
42087	07/07/05	50,000	Yellow Corn
33468	09/11/03	150,000	Yellow Corn
44606	03/24/06	100,000	Soybeans
44247	02/03/06	25,000	Soybeans

According to Cargill, it had numerous communications with Randall Ag from August 2008 through May 2009 in an effort to reach a resolution on the undelivered grain and resulting damages. Cargill produced a cancellation notice indicating that as of May 12, 2009, its total damages based upon the difference in prices between the contracted price and market price as of the date of cancellation for each of the contracts in dispute was \$1,632,075.89. Cargill claimed that Brian Randall, Randall Ag's president, reviewed and signed this cancellation notice during an in-person meeting on May 13, 2009.

Randall Ag agreed that it did not deliver grain to Cargill under 21 of the 22 contracts in dispute. Randall argued that the one exception should be excluded from this case because it was

not by Randall Ag Ventures as the seller. Randall Ag also argued that four other of the contracts in dispute should be excluded from this case because they were signed at a time when Randall Ag had different partners than it does currently. Randall Ag raised various other arguments based upon its arrangements with Cargill Ag Marketing Services (CAMS) in an advisory capacity; its financing arrangements with Cargill and third-parties; Randall Ag's ability to deliver grain to other buyers during certain of the crop years at issue; Randall Ag's intention to fulfill these contracts during the 2009 crop year; and the propriety and timing of Cargill's cancellation of these contracts, particularly given that the original delivery periods had passed long before the contracts were cancelled.

The Decision

(1) The arbitrators noted that each of the contracts at issue stated, "Rules to Govern: NGFA" prominently on the front page. Each contract also stated the following provision under "PURCHASE TERMS":

1. NGFA Trade and Arbitration Rules. Unless otherwise provided herein, this Contract, and all other grain contracts by and between Buyer and Seller, shall be subject to the Trade Rules of the National Grain and Feed Association (NGFA), which Trade Rules are incorporated herein by reference. The parties agree that the sole forum for resolution of all disagreements or disputes between the parties arising under any grain contract between Buyer and Seller or relating to the formation of any grain contract between Buyer and Seller shall be arbitration proceedings before NGFA pursuant to NGFA Arbitration Rules. The decision and award determined by such arbitration shall be final and binding upon both parties and judgment upon the award may be entered in any court having jurisdiction thereof. Copies of the NGFA Trade and Arbitration Rules are available from Buyer upon request and are available at www.ngfa.orf. In addition to any damages otherwise provided by law, Buyer shall be entitled to the recovery of its attorney's fees and costs.

The arbitrators further noted that Randall Ag stated in its argument that it agreed that NGFA Arbitration and Trade Rules applied to this dispute.

(2) The arbitrators considered the parties' statements regarding the identification of the members of the partnership. In its original complaint – in addition to Randall Ag Ventures – Cargill named individuals and entities it referred to as Randall Ag's general partners: Brian Randall, James Randall, Kathleen

Kocer Farms, Steven Grandpre Farms, BRN Farms, JRN Farms, KKR Farms, SGR Farms, KKZ Farms, SGZ Farms, Ben Gains, and JRT Farms.

In 2010, the arbitration case was stayed at Cargill's request because of pending bankruptcy proceedings involving Brian Randall. When the arbitration case was eventually restarted, Brian Randall was removed as a named defendant at Cargill's request because its claims against him had been discharged by the bankruptcy court.

In its statement of the facts, Randall Ag provided some background of Randall Ag Ventures as a general partnership formed in South Dakota in March 2005. Randall Ag identified the original members of the partnership. According to Randall Ag, the members of the partnership changed in March 2006. Randall Ag also argued that four of the grain purchase contracts be excluded from this case because they were signed prior to March 2006 at a time when Randall Ag had different partners than it does currently.

The arbitrators noted that in its rebuttal on this issue, Cargill stated that the composition of the members of the partnership was "irrelevant" as the obligations under the contracts were strictly between the Cargill and the partnership entity itself, Randall Ag Ventures. Cargill further stated that the individual members of the partnership it had identified in this arbitration case were merely those partners that it was aware of from prior business dealings and an investigation of public records. Cargill stated these members "were provided only as background information." Cargill further specifically stated in its rebuttal that it was "seeking relief against the partnership" and that the individual liability of each partner was a matter separate and distinct for the individual partners to determine.

Therefore, while Cargill may have originally named the individual partners in this arbitration case, the arbitrators determined to decide this case as solely between Cargill and the partnership entity, Randall Ag Ventures.

(3) The arbitrators considered Randall Ag's argument that contract number EMER-AH-33468 (the oldest contract) should be excluded from this case because the original contract was signed solely by Brian Randall without identifying Randall Ag Ventures as the seller. The arbitrators noted, however, that subsequent signed amendments, including from August 2007, identified Randall Ag Ventures as the seller. Therefore, the arbitrators declined to exclude this contract from this case for this reason.

(4) The arbitrators considered the parties' statements concerning the relationship between Randall Ag and Cargill Ag Marketing Services (CAMS). Randall Ag stated that from October 2005 through November 2006 it retained CAMS to provide advisory trading services. As a result, according to Randall Ag, Cargill had information concerning Randall Ag's operations that provided Cargill with reason to know it would not receive grain under various contracts yet Cargill failed to cancel outstanding contracts at that time. The arbitrators noted the arguments and documentation provided by Cargill indicated that CAMS was a separate legal entity. The arbitrators determined that the advisory arrangement between Randall Ag and CAMS did not affect the grain delivery obligations under the purchase contracts with Cargill.

(5) The arbitrators considered questions raised by Randall Ag regarding financing of crop inputs provided by Cargill over the years, including its decision against providing financing during the 2009 crop season just prior to its cancellation of the contracts. The arbitrators determined that such financing arrangements between Cargill and Randall Ag did not affect the obligations under the grain purchase contracts.

(6) The arbitrators considered the wide range of issues presented by both Randall Ag and Cargill surrounding the alleged extensions of the contracts and the eventual cancellation of the contracts. The contracts at issue in this case provided for the deliveries of grain during various shipment periods in 2004-2008. The terms of the contracts provided for the right to amend the applicable futures month "a maximum of three

times, and then only within the crop year." Yet the "Confirmation of Contract Change" amendments that confirmed the cancellation of most of the contracts subject to this dispute were executed by the parties in May 2009. The arbitrators questioned how it was that the contracts were rolled beyond what was provided for in the contracts. The arbitrators also questioned why the parties failed to submit the amendments to the original contracts. In its arguments, Randall Ag claimed that Cargill waited too long in not cancelling the contracts until May 2009. However, Randall Ag also claimed in its arguments that in 2009 it still intended to fulfill the contracts with Cargill. In support of this contention, Randall Ag submitted that it did deliver grain to other buyers in 2009.

The arbitrators agreed that as a whole the initial contracts between the parties were valid. Randall Ag had an obligation – notwithstanding what were its claimed intentions in 2009 – to actually deliver the contracted grain to Cargill. With respect to what damages to award, however, the arbitrators deliberated concerning the sufficiency of the evidence and documentation provided in this case. In particular, the arbitrators discussed the lack of documentation that demonstrated how the contracts were allegedly rolled.

Two of the arbitrators, representing a majority of the arbitration committee, determined that Cargill was entitled to damages based upon the "Confirmation of Contract Change" amendments that confirmed the cancellation of most of the contracts subject to this dispute in May 2009. They noted that these amendments were agreed to and signed by both parties. However, they concluded that for six of the contracts at issue – contracts numbered 44635, 43892, 43084, 42087, 33468 and 44604 – Cargill's claims for damages were unsubstantiated. The two arbitrators in the majority determined that based upon their review of the arguments and materials presented by the parties, they were unable to verify the claimed damages related to those six contracts. Damages for these contracts were consequently excluded from their award.

One member of the arbitration committee questioned whether to award any damages given the lack of documentation provided in this case, particularly the absence of documentation corroborating how the contracts were extended and amended prior to their eventual cancellation in May 2009.

The Award

Therefore, by a majority decision the arbitrators decided to award to Cargill \$524,624.25 based upon the following calculations:

Contract Number	Contract Price Per Bushel	Service Fee Per Bushel	Cancel. Price Per Bushel	Market Difference Per Bushel	Bushels Cancelled	\$ (loss)/gain
204706	\$5.00	\$.02	\$6.59	\$(1.61)	25,000	\$(40,250)
204683	\$5.39	\$.02	\$6.59	\$(1.22)	5,000	\$(6,100)
204554	\$5.16	\$.02	\$6.59	\$(1.45)	40,000	\$(58,000)
203367	\$4.7125	\$.02	\$6.6675	\$(1.98)	4,000	\$(7,900)
203366	\$4.7125	\$.02	\$6.6675	\$(1.98)	15,000	\$(8,787.25)
47961	\$5.00	\$.02	\$5.97	\$(0.99)	50,000	\$(49,500)
45802	\$4.60	\$.02	\$5.97	\$(1.39)	20,000	\$(5,351.03)
45602	\$4.77	\$.02	\$5.97	\$(1.22)	10,000	\$(12,200)
44615	\$2.80	\$.02	\$4.2225	\$(1.44)	30,000	\$(43,275)
44550	\$2.80	\$.02	\$4.2225	\$(1.44)	25,000	\$(36,062.50)
44541	\$2.80	\$.02	\$4.2225	\$(1.44)	35,000	\$(50,487.50)
44529	\$4.19	\$.02	\$6.6725	\$(2.48)	8,000	\$(19,860.00)
44486	\$4.31	\$.02	\$6.6575	\$(2.35)	8,000	\$(1,121.52)
44114	\$2.65	\$.02	\$4.2225	\$(1.59)	25,000	\$(39,812.50)
44111	\$2.65	\$.02	\$4.2225	\$(1.59)	50,000	\$(79,625.00)
44247	\$6.40	\$.02	\$9.665	\$(3.29)	25,000	\$(66,291.96)

The arbitrators declined to award interest in this case.

Dated: August 14, 2013

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

Harry Bormann, Chair
 Grain Team Leader
 MaxYield Cooperative
 West Bend, Iowa

Dan Beard
 Manager
 Demeter LP
 Crystal Lake, Ill.

Jeffrey K. Brooks
 General Manager
 Grainland Cooperative
 Eureka, Ill.