



National Grain and Feed Association Arbitration Decision

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CASE NUMBER 2609

Plaintiff: Citizens LLC, Vermontville, Mich.

Defendant: Huhn Farms, Gregory Huhn, Geoffrey Huhn, Kathleen Huhn and Christina Huhn, Eagle, Mich.

STATEMENT OF THE CASE

Citizens LLC (“Citizens”), as the buyer, entered into 24 separate grain purchase contracts with the sellers, Huhn Farms, Gregory Huhn, Geoffrey Huhn, Kathleen Huhn and Christina Huhn (collectively, “Huhn Farms”). In total, the contracts provided for the delivery of 111,991 bushels of U.S. No. 2 yellow corn; 5,000 bushels of U.S. No. 2 yellow soybeans; 40,000 bushels of U.S. No. 1 non-GMO soybeans and 25,000 bushels of U.S. No. 2 soft red wheat. The contracts consisted of both hedge-to-arrive contracts and fixed-price contracts. Both Huhn Farms and Citizens signed the contracts. The contracts were dated between Sept. 3, 2009 and Aug. 5, 2010.

Prior to agreeing upon the individual grain contracts in this dispute, Huhn Farms and Citizens had also entered into a “Master Trading Agreement” (Master Agreement) in May 2009. Huhn Farms signed the Master Agreement on May 1, and Citizens signed it on May 5. Gregory Huhn, Kathleen Huhn, Geoffrey Huhn and Christina Huhn also each signed a “Personal Guaranty by Principals of Entity” (Personal Guaranty) on May 1, 2009.

In the course of dealings between the parties on the 24 grain purchase contracts, Citizens paid to Huhn Farms an advance of \$34,000 on one of the soybeans contracts (contract number 6763) on Dec. 31, 2009. Huhn Farms delivered 8,009.19 bushels under one of the corn contracts (contract number 6715), which provided for delivery of a total of 15,000 bushels. Although the parties agreed to various rolls of delivery periods for the contracts, no additional deliveries of grain were completed under any of the contracts.

In early April 2011, Huhn Farms requested another roll of the delivery periods for the contracts. Citizens declined this request. On April 25, 2011, Citizens wrote to Huhn Farms stating that it was concerned about Huhn Farms’ intent to deliver under the contracts based upon recent alleged conversations between the parties. In its letter, Citizens requested delivery on the “older crop” contracts with April 2011 delivery periods. Citizens also requested adequate assurances of performance from Huhn Farms with respect to the “old crop” contracts with June 2011 delivery periods. Citizens further demanded cash deposits, pursuant to the contract terms, for newer contracts with future delivery periods. In its letter, Citizens advised that it would cancel the contracts and calculate default damages on May 2, 2011, absent a timely response from Huhn Farms.

Citizens claimed that it cancelled the contracts on May 3, after Huhn Farms failed to deliver any grain or comply with the requests for assurances or deposits. Citizens also stated that Huhn Farms failed to return the cash advance of \$34,000. In its first argument submitted in this arbitration proceeding, Citizens claimed damages in the amount of \$626,794.03. Citizens also claimed interest at the rate of 21% per annum pursuant to the terms of the Master Agreement. Citizens further requested nearly \$7,000 in attorney fees and costs. In its second argument, Citizens increased its principle claim for damages from \$626,794.03 to \$689,116. Citizens stated that the additional \$62,322.72 in damages resulted from basis and freight differentials that were “inadvertently omitted” from the original claim.

Huhn Farms claimed that Citizens' assessment of damages was overstated and inaccurate. Huhn Farms contested various components of Citizens damages including service and cancellation fees. Huhn Farms also disputed the rate and time period for interest claimed by Citizens.

Huhn Farms also asserted a counter-claim against Citizens for losses to Huhn Farms' soybean and corn crops production. In its counter-claim, Huhn Farms argued that 1) Citizens sold it "defective" soybean seed in May 2010; 2) Citizens erred in how it applied dry ammonium sulfate fertilizer to 700 acres of Huhn Farms' corn production; and 3) Citizens incorrectly applied pesticide treatment on Huhn Farms' soybean acreage. According to Huhn Farms, these actions resulted in approximately \$340,581 in losses to its crop production.

Huhn Farms originally requested an oral hearing for this case but then withdrew that request.

THE DECISION

After careful review and deliberation, the arbitrators determined that there was no dispute between Citizens and Huhn Farms regarding the underlying existence and validity of the various agreements between the parties – the 24 individual purchase contracts, the Master Agreement and the Personal Guaranty. Rather, the disagreement between the parties concerned 1) the allegations in Huhn Farms' counter-claim and 2) how Citizens cancelled the contracts and assessed its damages.

With respect to Huhn Farms' counter-claim, the arbitrators determined that Huhn Farms failed to support its allegations. Huhn Farms did not corroborate its claims with sufficient information concerning the acreage, crops and market values involved. Huhn Farms presented an insufficient basis upon which to determine where and when the alleged damages occurred. Based upon the minimal information provided by the parties in this respect, the allegations concerning materials provided and actions taken by Citizens relate back to a time period ending in mid-2010 and beginning as early as 2008. However, the arbitrators noted that the allegations now presented in Huhn Farms' counter-claim were not previously raised throughout the course of dealings between the parties – not even during the critical communications between the parties in April 2011 that led to Citizens' cancellation of the contracts. Therefore, the arbitrators denied Huhn Farms' counter-claim.

The arbitrators consequently concluded that this dispute between the parties focused upon how Citizens cancelled the contracts and assessed its damages. The arbitrators determined that NGFA Grain Trade Rule 28(A) applied in this regard. The rule states as follows:

Rule 28. Failure to Perform

(A) Seller's Non-Performance

If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Buyer by telephone confirmed by subsequent written communication. The Buyer shall then, at once elect either to:

- (1) agree with the Seller upon an extension of the contract; or
- (2) buy-in for the account of the Seller, using due diligence, the default portion of the contract; or
- (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

If the Seller fails to notify the Buyer of his inability to complete his contract, as provided above, the inability of the Seller shall continue until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. In such case it shall then be the duty of the Buyer, after giving notice to the Seller to complete the contract, at once to:

- (1) agree with the Seller upon an extension of the contract; or
- (2) buy-in for the account of the Seller, using due diligence, the default portion of the contract; or
- (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

The arbitrators also noted that paragraph 6 of the Master Agreement between the parties provided as follows:

Customer acknowledges that he/she/it has the obligation to provide Company with assurances that it will perform and make timely delivery of contracted commodities. As adequate assurance, Company may demand payment from Customer up to an amount equal to the difference between the contract price and the then prevailing market price for the contracted commodity. Customer shall provide such adequate assurance within 48 hours of the receipt of a demand from the Company. Customer's failure to provide adequate assurance as demanded by Company shall constitute Customer's repudiation of the Contract or Contracts.

The arbitrators further noted that paragraph 12 of the purchase contract terms on the individual grain contracts stated as follows:

Buyer retains the right to require: (a) payment of dollars up to the replacement cost of any undelivered balance; or (b) other adequate assurance of Seller's performance, if, in Buyer's sole discretion, Buyer has reason to feel insecure about Seller's performance under Contract. Seller must make any such required payments, or do such other things as required under this paragraph in the time and manner set forth by Buyer.

The arbitrators concluded that upon Huhn Farms' failure to provide the grain or adequate assurances or deposits, Citizens' actions to cancel and buy-in the contracts were in accordance with NGFA Grain Trade Rule 28(A) as well as the provisions of the Master Agreement and purchase contracts. Citizens' calculations of its damages in cancelling the contracts, including those service and cancellation charges assessed, were corroborated by the evidence provided and in accordance with the contract terms.

However, the arbitrators declined to award to Citizens the increased amount requested in its second argument of \$689,116 that had been "inadvertently omitted" in Citizens' original claim. The arbitrators further declined to award the nearly \$7,000 requested by Citizens for attorney fees and costs.

With respect to interest, the arbitrators noted that the Master Agreement provided for "compound interest at the rate of 21% per annum" from the date of default on damages awarded. The arbitrators awarded interest pursuant to the agreement between the parties; however, the arbitrators declined to award the additional interest claimed by Citizens in the amount of \$5,439.96 for the \$34,000 cash advance.

In their award, the arbitrators also relied upon the Personal Guaranty, which was signed individually by Gregory Huhn, Kathleen Huhn, Geoffrey Huhn and Christina Huhn. The Personal Guaranty stated:

The undersigned jointly and severally guarantee, absolutely and unconditionally, the performance of the Agreement and all Contracts, the payment of all liabilities of Customer to Company of whatever nature, whether now existing or subsequently incurred.

THE AWARD

The arbitrators ruled that the defendants, Huhn Farms, Gregory Huhn, Geoffrey Huhn, Kathleen Huhn and Christina Huhn, were liable for damages in the amount of \$621,354.07. The arbitrators also awarded compound interest of 21% per annum beginning May 3, 2011 until the judgment is paid pursuant to the agreement between the parties. The arbitrators declined to award attorney's fees or costs to either party.

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

Scott Dubbelde, *Chair*

General Manager
Farmers Cooperative Elevator Co.
Hanley Falls, Minn.

Joe Christopher

Senior Grain Manager
Crossroads Cooperative Association
Sidney, Neb.

Ron Williams

Vice President
Columbia Grain Inc.
Portland, Ore.