



National Grain and Feed Association Arbitration Decision

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January 9, 2015

CASE NUMBER 2698

Plaintiffs: Joe and Ann Elliott, Forest, LA

Defendant: Tubbs Dryers, Inc., Pioneer, LA

STATEMENT OF THE CASE

The plaintiffs in this case, Joe and Ann Elliott, owned a farm operated by their sons, David and Philip Elliott. On August 30, 2012, David Elliot sold 9,000 bushels of soybeans to the defendant, Tubbs Rice Dryers (“Tubbs”), under contract no. 4084 at \$17.22-per bushel. The Elliotts stated that when that contract was made they also confirmed with a Tubbs employee that there were no other existing open contracts between the parties. According to the Elliotts, they subsequently delivered the quantity of soybeans under this contract and consequently understood that they had fulfilled all contractual obligations with Tubbs.

The Elliotts stated that on September 7, 2012, however, Tubbs notified them that it claimed two additional contracts for a total of 10,000 bushels of soybeans remained open (identified by Tubbs as contract nos. 3087 and 3183). These older contracts claimed by Tubbs were “hedge to arrive” contracts dated 1 ½ years earlier: contract no. 3087, dated February 1, 2011, was for 5,000 bushels at the futures price of \$12.35-per bushel; contract no. 3183, dated April 11, 2011, was for another 5,000 bushels at the futures price of \$13.05-per bushel. Based upon a settlement sheet provided by Tubbs, dated September 7, 2012, contracts nos. 3087 and 3183 were priced using a basis of +.12.

Tubbs applied the soybeans delivered by the Elliotts under contract no. 4084 to the two older contracts from 2011. The Elliotts stated they were previously unaware of and had never received the 2011 contracts. The Elliotts claimed \$39,630 as damages for the 9,000 delivered soybeans based upon the price difference between the 2011 contracts and the August 30, 2012 contract.

Tubbs argued that the 2011 contracts were valid based upon its transactions with Phillip Elliott. Tubbs claimed it sent contract confirmations promptly in the mail. Tubbs also stated that conversations occurred with the Elliotts on June 21, 2012, regarding cancellation of both of these contracts. According to Tubbs, the Elliotts instructed that the contracts be cancelled if the cancellation could be made at no loss to the Elliotts. Tubbs also stated that the Elliotts were subsequently notified when the contracts could be cancelled at a cost of 25-cents per bushel. A listing of the open contracts claimed by Tubbs, including contract nos. 3087 and 3183, as well as copies of the actual contracts were among the materials provided to the arbitrators. Tubbs did not obtain signed confirmations for those two older contracts.

The Elliotts insisted that they neither received nor were previously aware of the 2011 contracts. They argued that their normal method of operation with Tubbs was to sign and return contract confirmations to Tubbs and, in support, the Elliotts presented numerous confirmations for other contracts between the parties that had been executed by the Elliotts and returned to Tubbs.

THE DECISION

At the core of this dispute were the two contracts that Tubbs claimed were made in 2011. In reaching their conclusions, the arbitrators focused upon various issues, including the following:

- 1) The dates the two contracts in dispute were agreed upon according to Tubbs were about 18 months in advance of the shipment period.
- 2) The arbitrators determined that Tubbs presented a plausible case to support the transactions it claimed were agreed upon between the parties when the Elliotts delivered their soybeans at harvest in 2012. However, the arbitrators determined that this case turned upon an application of trade rules, trade custom and practice that led the arbitrators to conclude that Tubbs failed to prove that the contracts in dispute were valid. The arbitrators determined that Tubbs did not act in a timely manner and took insufficient measures with respect to the disputed transactions.
- 3) Although neither industry practice nor the NGFA Trade Rules require that a signed confirmation be returned for a contract to be valid, the arbitrators noted that Tubbs in this case was not prudent in how it executed and followed up on with respect to the contracts and confirmations in dispute in this case. It was unclear to the arbitrators whether Tubbs made any attempts to follow up on confirmations for the contracts from February and April 2011.
- 4) It is prudent to anticipate that when a seller fails to return a signed confirmation a subsequent dispute related to the existence or validity of the contract and potential damages is likely to occur. Given the circumstances of this case and the volatile markets of the time, it would have been prudent for Tubbs to take prompt and immediate efforts to either confirm the contracts or cancel the disputed transactions in a deliberate manner thereby mitigating potential damages.
- 5) In particular, when a contract is made so far in advance of the shipment period, a buyer should be prudent with the issuance of confirmations and mitigation of its potential damages.
- 6) NGFA Grain Trade Rule 30(C) states that with respect to written communications, confirmations or notifications, “[t]he sender shall be responsible for the correct transmission of the message.” The arbitrators noted that in this case Tubbs alleged it issued confirmations about 18 months in advance of the shipment periods. The arbitrators concluded that Tubbs did not subsequently take appropriate action to confirm that the confirmations had been correctly transmitted and received.

THE AWARD

The arbitrators concluded that Tubbs did not take sufficient measures to confirm the contracts or mitigate consequential damages. Therefore, the arbitrators ordered that Tubbs pay to the Elliotts the amount of \$39,600 based upon the following calculations:

9,000 bushels on contract 4084	\$17.22
price actually paid	\$12.82 (average of \$12.47 and \$13.17)
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difference	\$ 4.40
damages	\$39,600 (4.40 x 9,000)

Dated: December 1, 2014

SUBMITTED WITH THE UNANIMOUS CONSENT OF THE ARBITRATORS, WHOSE NAMES AND SIGNATURES APPEAR BELOW:

Ben Baer, *Chair*
President
Livestock Nutrition Center
Memphis, TN

Joe Hennen
Assistant Grain Dept. Manager
Co-op Country Farmers Elevator
Renville, MN

Chad Larson
Grain Manager
Farmers Cooperative of Hanska
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