National Grain and Feed Association
Arbitration Decision
www.ngfa.org | www.ngfa.org/decisions

1400 Crystal Drive, Suite 260
Arlington, VA 22202

P: (202) 289-0873
F: (202) 289-5388

November 3, 2016

CASE NUMBER 2730

PLAINTIFF: GAVILON GRAIN, LLC
OMAHA, NE

DEFENDANT: MAHARD FEED MILL, INC. A/K/A MAHARD EGG FARM, INC.
PROSPER, TX

STATEMENT OF THE CASE

Gavilon Grain, LLC (Gavilon) and Mahard Feed Mill, Inc. a/k/a Mahard Egg Farm, Inc. (Mahard) entered into contract number SC6047516, dated July 9, 2013, whereby Gavilon would sell and deliver 182,400 bushels of #2 yellow corn for $8.95 per bushel to Mahard's feed mill between July 9 and August 20, 2013.

Gavilon states it stopped delivery under the contract due to nonpayment of overdue invoices by Mahard in October 2013. Gavilon made multiple attempts to contact a representative of Mahard, who could make a decision for Mahard on how to execute the open balance of the contract. According to Gavilon, all attempts by Gavilon to reach a representative at Mahard who had the authority to make such a decision failed. Gavilon subsequently cancelled the remaining 37,601.96 bushels on February 14, 2014. Gavilon claims that Mahard is unwilling to pay the outstanding balance. Gavilon seeks damages totaling $203,431.22, which consists of $95,426.19 for corn delivered under contract SC6047516; $105,661.52 for the cancellation of the unshipped quantity of corn under that contract (37,601.96 bushels); and $2,343.51 from a previous invoice.

Mahard claims that it had previously confirmed with Gavilon that the invoices were paid in full and that by the time Mahard was intending to resume the contract, Gavilon had cancelled the remaining balance. Mahard also claims that based upon the initial verbal agreement between the parties, the corn was to be delivered the next day, which Gavilon failed to do and subsequently breached the agreement. Mahard does not dispute that it owes Gavilon the $2,323.51 from a previous invoice.

THE DECISION

The arbitrators relied upon NGFA Grain Trade Rule 3(B) [Confirmation of Contracts] to determine that contract SC6047516 was a binding contract. Grain Trade Rule 3(B) states as follows:

> If either the Buyer or the Seller fails to send a confirmation, 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, as described in Rule 3(A), of any disagreement with the confirmation received.

Based upon the facts and arguments presented in the case by both parties, the arbitrators concluded that Mahard received the corn loads in question and failed to make a good faith effort to negotiate an acceptable solution for executing the balance of the unshipped corn. The arbitrators relied upon standard trade practices as well as NGFA Grain Trade Rule 28(B) [Buyer's Non-Performance], which provides for a seller to cancel a contract upon notice and confirmation with the buyer of the buyer's inability to perform on the contract. The arbitrators also referred to paragraph 8(d) in the terms and conditions for contract SC6047516, which states: "Seller expressly reserves the right to terminate this Contract because of: … (d) breach of this Contract by Buyer and/or any default by Buyer in the performance of any of its obligations under this Contract."

Because the contract specifically provided for a shipment period of July 9 through August 20, 2013, the arbitrators did not find merit in Mahard's claim that Gavilon had failed to comply with the agreement by not delivering the corn when Mahard claimed it was due.

The arbitrators consequently concluded that Gavilon is owed for the eleven corn loads delivered to Mahard totaling $95,426.19 as well as the $2,343.51 from the previous invoice. The arbitrators noted that Mahard stated in its arguments, "It looks like we got delivery, although it is hard to tell from our record" in reference to the loads of corn delivered to Mahard. The arbitrators also noted Mahard agreed in its arguments it owed the $2,343.51 from the previous invoice to Gavilon and it would make payment when instructed to do so. Mahard failed to corroborate any claim that the other invoices in dispute were paid. Gavilon provided documentation demonstrating that the corn was delivered and that after numerous attempts to collect payment the invoices went unpaid.

Further, the arbitrators concluded that Gavilon is owed $97,295.07 in cancellation costs. Since the arbitrators were unable to verify the delivered basis, they deemed it necessary to use futures prices only to calculate cancellation costs. Those costs were consequently calculated using the closing CBOT prices of the nearby corn futures on the days of the sale and cancellation ($7.04 and $4.4525, respectively), resulting in a difference of $2.5875 per bushel for a total of $97,295.07 for the 37,601.96 bushels.

THE AWARD

The arbitrators awarded $195,064.77 in damages to Gavilon Grain, LLC from Mahard Feed Mill, Inc.

Decided: October 4, 2016

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

Matt Barr, *Chair*
Merchandiser
Foster Farms
Fresno, CA

J.T. Dean
Chief Operations Office
Trillium Farms
Sioux Center, IA

Joel Williams
Senior VP, Ethanol
Proprietary Trading
Noble Americas
Omaha, NE