



March 24, 2020

CASE NUMBER 2829

**PLAINTIFF: PARRISH & HEIMBECKER LIMITED
BIGGAR, SASKATCHEWAN, CANADA**

**DEFENDANT: TSM WINNY AG LTD.
SOVEREIGN, SASKATCHEWAN, CANADA**

STATEMENT OF THE CASE

In February of 2017, TSM Winny Ag Ltd. (TSM) entered into contract number 118459 with Parrish & Heimbecker, Limited (P&H) for 1,905 tons of Canadian West Red Spring Wheat (CWRS) “Grade: 3CWRS 14.0” for June 2017 delivery. The agreed upon contract price was \$216.79 per ton. On February 15, 2017, the contract confirmation was signed and dated by both P&H and TSM. On July 10, 2017, TSM informed P&H by email that, “Would think its [sic] best to buy contract out on the #3 grade.” On July 10, 2017, P&H completed the contract cancellation, which resulted in an invoice for \$42,063.52 being issued to TSM. In this case, P&H seeks \$42,063.52 in contract buy-in costs plus interest. TSM seeks dismissal of P&H’s claim and full reimbursement of its legal expenses. TSM argues it would have been feasible for P&H to buy-in replacement grain and there was only a marginal difference between the contract price and the market price at the time of cancellation. The contract and contract default notice included terms that referenced the NGFA Trade Rules.

THE DECISION

NGFA Grain Trade Rule 28(A) [Seller’s Non-Performance] provides that once the seller notifies the buyer that he will not be able to complete the contract, the buyer has until the close of the market on the next business day to cancel the defaulted portion of the contract. The arbitrators concluded that this timeline was followed in this case.

Based upon the evidence provided by the parties in this case, the arbitrators determined that the amount claimed of \$42,063.52 did not represent the accurate and applicable buy-in value. The basis price of \$11.84 identified on P&H’s contract cancellation invoice did not align with the basis price of \$1.30 stated on a separate July 11 purchase contract for like grade grain, which was provided as evidence by P&H. Therefore, the arbitrators applied the basis price of \$1.30 per ton for like grade grain in place of the \$11.84 claimed by P&H in the contract cancellation invoice for a buy-in price of \$33,251.61, plus an administrative fee (as provided in paragraph 7 of the purchase confirmation) of \$4,288.87 (\$10 per ton), for total contract buy-in costs of \$37,540.48.

Based upon the information provided, by unanimous decision, the arbitrators consequently awarded judgment to P&H against TSM for contract buy-in costs of \$37,540.48. No interest will be awarded. No legal expenses will be awarded to TSM Winny Ag Ltd.

THE AWARD

The arbitrators awarded \$37,540.48 in damages to Parrish & Heimbecker, Limited from TSM Winny Ag Ltd.

Decided: June 7, 2019

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

Lacey Seibert, *Chair*
Farm Advisement Director
CoMark Equity Alliance LLC
Enid, OK

Jerry Cope
Vice President, Marketing
Dakota Mill and Grain Inc.
Rapid City, SD

Steven Stegenga
Merchandiser
CHS Inc.
Sycamore, IL