



National Grain and Feed Association Arbitration Decision

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January 6, 2023

CASE NUMBER 2907

**PLAINTIFF: FIELD FARMS MARKETING LTD
PETROLIA, ONTARIO, CANADA**

**DEFENDANT: HURON COMMODITIES INC.
CLINTON, ONTARIO, CANADA**

STATEMENT OF THE CASE

Field Farms Marketing Ltd. (FFM) purchased 520 metric tons (MT) of non-GMO soybean screenings from Huron Commodities Inc. (Huron) on March 4, 2021 (FM's contract number PSBC20014 and Huron's contract number 10261). The contract called for shipment to occur April 1-30, 2021. The nature of the dispute involves the pricing of the futures portion of the contract, subsequent shipments, and the conclusion of the contract, including the disposition of the unshipped balance of the contract.

Background:

FFM engaged in negotiations with Huron beginning on March 1, 2021. Negotiations continued between the parties via email until an agreement was reached on March 4, 2021, for FFM to purchase 520 metric tons of non-GMO soybean screenings from Huron. The negotiations concluded with an agreement for FFM to buy and Huron to sell, said screenings at CAD 5.60 per bushel over the May 2021 CBOT Soybean Futures for shipment April 1-30, 2021. Both parties agree as to the date of the contract, the quality and quantity of the product, the delivery point, the payment terms, the basis price, and the fact that National Grain and Feed Association (NGFA) Grain Trade Rules would govern the contract. The two parties disagree regarding the timing and pricing of the futures portion of the underlying contract. It was not until a date well beyond the original shipment period of the contract that the price discrepancy was discovered.

As the first and, ultimately, the only shipment against the contract drew near, Huron sent an email on May 21, 2021, to FFM seeking to price the futures portion of the contract. FFM's response (dated May 24, 2021) indicated that its intention was to price the contract at the time it was written (March 4). This pricing discrepancy, and price movement between the two extreme dates, ultimately clouded all subsequent communication, negotiation, and fulfillment of the contract.

Sixteen containers totaling 320.60 MT were eventually shipped with a vessel bill of lading date of June 4, 2021. At that point, the discussions between the two parties had eliminated the potential for further shipments against the contract, with each party blaming the other for the failed completion of the contract.

FFM states that upon completion of the initial negotiations, it promptly sent via email confirmation of a flat priced trade to Huron, in accordance with NGFA Grain Trade Rule 3. FFM further states the price portion of its confirmation indicated the futures level that it intended to use in pricing the contract. FFM argues Huron never rejected FFM's confirmation in accordance with NGFA Grain Trade Rule 3(B) and that its confirmation should govern. FFM claims the flat price on its contract confirmation should be the price used for settlement of the amount of screenings shipped. FFM further claims it should be reimbursed for buy-in costs incurred resulting from Huron's refusal to complete the contract and ship the remaining contract balance of 119.40 MT. FFM to date has not paid any invoices. FFM seeks to be awarded the right to pay at its originally claimed flat price, along with an additional CAD 12,554.00 to cover alleged buy-in costs.

Huron states the negotiations between the parties surrounded a basis transaction, and it too promptly sent a confirmation of the trade to FFM, in accordance with Rule 3, and that its confirmation was in turn signed and returned by FFM. Huron claims that there was no discussion of pricing futures at that time or at any time until after the end of the original shipment period of the contract. Huron argues that FFM did not have the unilateral right to alter the contract without mutual agreement between the two parties confirmed immediately in writing pursuant to NGFA Grain Trade Rule 4. Huron claims that the price it established for the contract on May 27, 2021, should be the governing price for the shipped product. Huron further claims CAD 2,057.64 related to a forced sale on April 14, 2021, to clear inventory Huron determined it would not be able to ship to FFM. In addition, Huron claims CAD 25,000 in damages resulting from FFM's failure to pay any invoices to date and to cover interest and opportunity cost from Huron not having the use of the funds.

THE DECISION

The arbitration committee concludes that both parties intended to enter into a basis contract for the non-GMO soybean screenings in question. Further, both parties exchanged confirmations, which included providing for the NGFA Grain Trade Rules as the governing trade rules, along with NGFA Arbitration as the venue for deciding contract disputes.

The evidence submitted – in both the form of the email negotiations and the confirmation from Huron, which FFM returned and signed – confirms that this was a basis contract. FFM's contention is that its confirmation indicates its intention that the futures price be used. NGFA Grain Trade Rule 9 states:

All unpriced contracts shall be priced within the trading day's price range at Buyer's option while futures markets are open and tradable. Pricing shall not go beyond the contracted shipment period, the date of actual shipment, or the day before the first notice day of the contract futures month involved, whichever comes first.

While Rule 9 clearly indicates that futures pricing is at the buyer's option, Grain Trade Rule 4 states:

The specifications of a contract cannot be altered or amended without the express consent of both the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by written communication by both parties.

Implementation of futures pricing in this transaction would be an alteration of the original contract and requires compliance with Rule 4. There is no evidence that Huron was aware of FFM's intent to price the futures portion on March 4, 2021, and there is no evidence that the issue was even addressed between the two parties at any time prior to May 21, 2021.

The committee concludes that both parties failed in different respects to be diligent with regard to four components of the contract, which are as follows:

- A) The pricing of the futures portion of the contract: Huron failed to immediately reply with objection to the FFM confirmation showing a flat price, and FFM failed to get written confirmation from Huron of its intention to price futures on March 4, 2021. Whether through lack of oversight or sloppiness, both parties left that day with completely different ideas of the status of the futures portion of the contract.
- B) The pricing obligations of Rule 9: Huron failed to provide notice to FFM of the unpriced status of the contract as the “first notice day” for May 2021 Soybean Futures (April 30, 2021) came and went. Rule 9 states in part, “... Pricing shall not go beyond the contracted shipment period, the date of actual shipment, or the day before the first notice day of the contract futures month involved, **whichever comes first.**” (Emphasis added). Both parties had a duty to either price or defer pricing to another futures contract month on or before the first of those three events. As of April 29, 2021, it had become obvious that April 29, 2021, would precede both the end of the shipment period (April 30, 2021) and the date of actual shipment (no shipments had occurred).
- C) Shipment period of the contract: Neither party ever addressed the contract shipment period of April 1-30, 2021, after writing the initial contract, thereby creating a de facto open-ended shipment period.
- D) Notice requirements for exercising rights under Grain Trade Rule 28: Neither party ever gave notice under Rule 28 of the other party’s “Failure to Perform” nor formally sought to exercise their rights, thereby eliminating any claims related to “buy-ins” or “forced sales.”

Based upon these findings, the committee decided as follows:

- The contract in question was a basis contract written between FFM and Huron on March 4, 2021, at CAD 5.60 per bushel over the May 2021 CBOT Soybean Futures.
- The futures portion of the contract should have been established on the day before the “first notice day” for May 2021 CBOT Soybean Futures (April 29, 2021). On that day, May 2021 CBOT Soybean Futures settled at the close of trading at 15.4250 per bushel.
- Therefore, the contract price should have been CAD 772.54 per metric ton after the conversions that are laid out below.

Step 1: 15.4250 per bushel plus basis of CAD 5.60 equals CAD 21.0250 per bushel.

Step 2: CAD 21.0250 per bushel divided by 60 pounds per bushel equals CAD 0.350417 per pound. CAD 0.350417 per pound multiplied by 2,204.62 pounds per metric ton equals CAD 772.54 per metric ton.

Based upon this contract price, FFM owes Huron CAD 247,676.32 for the 320.60 MT shipped (CAD 772.54 multiplied by 320.60 MT equals CAD 247,676.32).

- FFM is also at fault for having paid nothing to date against the product shipped. The contract called for payment against scanned documents. FFM could have paid against its original contract price (the lowest of any amounts involved) while it worked to resolve the disputed balance in question.

Therefore, FFM is to pay interest to Huron on the amount of the award at the rate of 3.25 % from June 4, 2021, through the date of this award.

- No other damages are awarded in this case.
- The decision of the committee is unanimous.

THE AWARD

The arbitrators award CAD 247,676.32 to Huron Commodities Inc. from Field Farms Marketing Ltd., plus interest at a rate of 3.25% from June 4, 2021, through the date of this award

Decided: October 26, 2022

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

Kurt Haarman, *Chair*

Senior Vice President

Columbia Grain International LLC

Portland, OR

Corey Dencklau

VP & General Manager, Ingredients

The Gavilon Group, LLC

Covington, LA

Tyler Scifers

Senior Director of Grain

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