



October 20, 2023

CASE NUMBER 2932

**PLAINTIFF: DAKOTA MILL & GRAIN, INC.
RAPID CITY, SD**

**DEFENDANT: LYNN LEICHTNAM D/B/A LEICHTNAM FARMS
PRESHO, SD**

STATEMENT OF THE CASE

There are two contracts in dispute in this case with both calling for the sale of grain by Lynn Leichtnam d/b/a Leichtnam Farms (Leichtnam) to Dakota Mill and Grain, Inc (DMG). The first of these contracts (numbered P018313) was for 50,000 bushels of milo at a cash price of \$3.22 per bushel to be delivered October 1 through November 30, 2019. The second contract (numbered F0000321) was for 31,680 bushels of milo also to be delivered October 1 through November 30, 2019. This second contract originated from an initial contract (numbered F000287) priced at \$4.02 CBOT Corn Futures and to be delivered October 1 through November 30, 2019.

The dispute regards non-delivery on these contracts by Leichtnam to DMG. DMG filed an arbitration case with NGFA regarding this issue. Leichtnam claims that DMG has no grounds to enforce delivery under these contracts.

Contract PO18313

Contract PO18313 was originally written on November 27, 2018, between Leichtnam and DMG. It was signed by DMG on November 27, 2018, and by Leichtnam on December 25, 2018. The delivery period stated is from October 1 to November 30, 2019.

Leichtnam and a third party, who apparently was a business partner that worked with Leichtnam, delivered on this contract from October 26, 2019, until February 21, 2020. 43,272.12 bushels were delivered on this contract during this time frame.

Leichtnam provided documents showing that they also delivered milo to another buyer during the month of November 2019. This information shows that Leichtnam was delivering to both DMG's and the other buyer's elevators simultaneously and had enough production to fulfill the 50,000-bushel contract with DMG in 2019 if Leichtnam chose to do so.

The 43,272.12 bushels delivered under contract PO18313 were settled and paid to Leichtnam and Leichtnam's partner through various settlements on January 9 and February 24, 2020.

The 6,727.88 bushels remaining on this contract that were not delivered was rolled to a delivery period of October 1 through November 30, 2020. It was rolled at zero cost resulting in the contract price remaining the same at \$3.22 per bushel. The contract delivery period was rolled on June 19, 2020, and the original contract was modified with the remaining bushels for that delivery period. DMG's grain originator claims a conversation occurred with Leichtnam about rolling this contract and leaving the price the same. This contract for the remaining 6,727.88 bushels was printed and signed by DMG on June 19, 2020. An affidavit presented by DMG's grain division manager states he mailed the contract on or about June 19, 2020. An affidavit the DMG grain originator also states he spoke by telephone with Leichtnam on July 6, 2020, confirming this agreement.

No additional bushels were delivered on this contract by Leichtnam during the delivery period of October 1 through November 30, 2020. The price for DMG-delivered Milo on December 1, 2020, was \$4.96. DMG cancelled the contract at that time and price. Referring to NGFA Grain Trade Rule 28(A)(3), it is trade practice to use the fair market value at the close of market the next business day after default on a contract. This resulted in a loss to DMG of \$11,706.51 [$\$4.96 - \$3.22 = \1.74 per bushel multiplied by 6,727.88].

Contract F000321

The second contract (numbered F000321) was for 31,680 bushels of milo. This contract originated from an initial corn contract (numbered F000287) of 40,000 bushels which was priced at \$4.02 CBOT Corn Futures price to be delivered October 1 through November 30, 2019. The original contract F000287 was created on December 6, 2018.

According to the affidavit presented by DMG's grain originator, the basis was set for contract F000287 on or about September 19, 2019, at $-\$.47$ for a net price of \$3.55 per bushel.

Leichtnam delivered 8,319.84 bushels of corn on this contract and was paid for those bushels on January 9, 2020.

This corn contract for 40,000 bushels was adjusted down to 8,319.84 bushels and contains a signature to that effect by DMG dated December 27, 2019. Apparently, this adjustment was based upon a conversation between DMG's grain originator and Leichtnam on the same date of December 27, 2019.

The remaining balance of 31,680 bushels on this contract was then adjusted to milo instead of corn and changed to the delivery period of October 1 through November 30, 2020. According to DMG, the reason for the change of commodity was Leichtnam stating they did not have any more corn. The change of price was calculated by using the same futures price of \$4.02 but a new basis of $-\$.55$, resulting in a delivered contract price of \$3.47. This resulted in the creation of milo contract F000321, dated December 27, 2019.

Contract F000321 providing for 31,680.16 bushels of milo for delivery October 1 through November 30, 2020, was signed by DMG on June 19, 2020. DMG states it mailed this contract to Leichtnam also on or about June 19, 2020. This contract was again confirmed by telephone conversation between DMG's grain originator and Leichtnam on July 6, 2020.

No additional milo was delivered on this contract during the delivery period of October 1 through November 30, 2020. The price for DMG-delivered milo on December 1, 2020, was \$4.96. DMG cancelled the contract at that time and price. Referring to NGFA Grain Trade Rule 28(A)(3), it is trade

practice to use the fair market value at the close of market the next business day after default on a contract. DMG claims this resulted in a loss of \$44,669.03 on this undelivered grain. The arbitrators determined, however, that DMG's calculations are incorrect as the contract price was \$3.47 and the market price was \$4.96. This results in a difference of \$1.49 per bushel, which amounts to a loss to DMG of \$47,203.44.

The arbitrators noted that the main arguments presented by Leichtnam in this case are as follows:

- 1) Leichtnam never knew about the contracts that were rolled or amended and Leichtnam never agreed to doing so.
- 2) DMG refused delivery of Leichtnam's grain due to test weight requirements and DMG was not taking delivery during that time period.
- 3) A verbal contract is not binding, and since these contracts are unsigned, they are not enforceable.
- 4) There was no reasonable indication that these contracts would be subject to jurisdiction or arbitration under the NGFA Arbitration and Trade Rules, and even if there had been, DMG failed to meet the requirements in those rules for filing and deadlines.

THE DECISION

The claim that Leichtnam never knew about these contracts is unfounded. For one, Leichtnam set basis on the corn contract on September 19, 2019, and then delivered corn against this contract and was paid for those bushels. It is assumed that Leichtnam knew about the contract when he set the basis and when he received payment on those bushels.

Leichtnam admits that he signed and agreed to contract PO18313. 43,272.12 bushels were delivered on this contract from October of 2019 through Feb of 2020, and Leichtnam and Leichtnam's partner received payment for those bushels. This would also assume knowledge and agreement of said contract.

Leichtnam states that DMG refused delivery of his milo due to lack of space or because Leichtnam was not able to meet quality specifications. The arbitrators noted some conversations between the parties concerning quality issues but no evidence was presented that DMG was not receiving grain. Based upon delivery records provided by Leichtnam, he delivered milo to another buyer simultaneously as delivering to DMG, demonstrating there were sufficient bushels to fulfill contractual obligations with DMG.

It is generally a very common business practice to roll delivery periods on contracts within the same crop years. It is less common to roll delivery periods from one crop year to another crop year. Because both contracts in this dispute were rolled ahead to different crop years and one contract was amended to corn from milo, it makes sense that there were conversations between DMG and Leichtnam regarding doing so. The documents provided by DMG demonstrate the mathematical calculations associated with executing those changes and resulting pricing adjustments. DMG acted in good faith to work with Leichtnam to allow delivery on these contracts by rolling delivery periods to the next crop year and to allow the change of commodity from corn to milo.

With respect to Leichtnam's argument that there was no indication in the contracts of the application of NGFA Trade Rules or Arbitration, the arbitrators note each of the contracts identified in this case include the statements "CONTRACT SUBJECT TO NGFA TRADE RULES" [emphasis in original] and "Subject to the rules of the National Grain and Feed Association." Further, NGFA Arbitration

specifically applies under NGFA Grain Trade Rule 29. On this basis, the parties agreed to resolve this dispute before NGFA and both the NGFA Trade and Arbitration Rules apply.

Leichtnam also argues that the arbitration case was not filed within the time frame allowed in the NGFA Arbitration Rules. NGFA Arbitration Rule 1(E) states an arbitration complaint must be filed “within 12 months after a claim arises, or within 12 months after the expiration date for performance of the contract(s) involved, whichever occurs last.” In this case, the dates for performance on the rolled contracts was November 30, 2020, and the contracts were cancelled on December 1, 2020. The complaint was filed on October 14, 2021. Therefore, this case was timely filed.

Leichtnam further argues on a couple of occasions that verbal contracts are not enforceable. The NGFA Grain Trade Rules and common business practices allow for verbal contracts to be valid. This is a necessity for the workability of countless daily transactions in the grain trade. Further, DMG in an appropriate manner followed up on the verbal conversations and amendments with written contract confirmations.

The arbitrators further note DMG listed an incorrect date on page 3 of its rebuttal argument of November 2018, which should state November 2019. It appears to be a mere typographical error by DMG but could cause some confusion, and it is, nonetheless, clarified in the sentence that followed in its rebuttal.

The arbitrators conclude that while some of the paperwork and processes completed by DMG did not reflect the best in industry practice, in the end, the contracts were valid and Leichtnam failed to deliver on contracted grain. DMG supported its claims by providing documentation showing the history of these contracts, including demonstration of pricing, market differences and associated amendments of the contracts.

THE AWARD

The arbitrators unanimously award damages to DMG in the amounts of \$11,706.51 for contract PO18313 and \$47,203.44 for contract F000321, for a total amount of \$58,909.95. The specific calculations for these damages are provided above in this decision. The arbitrators also award to DMG interest on the principal amount at a rate of 3.25% pursuant to NGFA Arbitration Rule 6(F). Interest shall accrue from October 14, 2021, the date this case was filed.

Decided: August 29, 2023

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

Doug Cropp, *Chair*
Grain Merchandiser
Premier Cooperative, Inc.
Champaign, IL

Jim Fagerholt
Director of Trading and Risk Management
MarKit County Grain LLC
Argyle, MN

Will Weathers
Senior Vice President
Farmers Grain Terminal, Inc.
Greenville, MS