



# National Grain and Feed Association Arbitration Decision

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February 19, 2025

## CASE NUMBER 2963

**Plaintiff:** The Delong Co., Inc., Clinton, WI

**Defendant:** Beechwood AgriServices Inc., Parkill, Ontario, Canada

### STATEMENT OF THE CASE

The contract in dispute is Delong Contract Number 3006523, entered into by The DeLong Co., Inc. (DeLong) and Beechwood Agri Services Inc. (Beechwood) on May 6, 2021, for delivery of organic soybeans during the 2021 harvest.

This case involved a claim for damages by DeLong against Beechwood stemming from cancellation of the contract for the delivery of organic soybeans. At the time of cancellation, DeLong calculated the difference in market price and contract price to be \$337,500. DeLong also claims interest and attorneys' fees.

According to DeLong:

Contract 3006523 was made between DeLong's grain merchandiser and Beechwood's organic manager on May 6, 2021, via email and confirmed via written contract. Through an email exchange on May 19, 2021, the parties adjusted the delivery period to "*harvest delivery*" and payment terms to "*net 15 days*" to reflect the terms originally agreed upon but not accurately stated in the written contract form. Beechwood failed to make delivery of the organic soybeans by the end of November 2021, and DeLong placed Beechwood in default for non-delivery on December 14, 2021. DeLong used available market information to establish a cancellation price and invoiced Beechwood on December 15, 2021, for the amount of \$337,500.

According to Beechwood:

Beechwood contends that no contract was made on May 6, 2021, or further confirmed on May 19, 2021. Beechwood bases its conclusion that no contract existed between the parties because no revised contract was sent between May 19 and October 6, 2021, during which time DeLong continued to communicate with Beechwood about potential new business. Beechwood emphasized the numerous times that DeLong attempted to get a signed contract from Beechwood, both from its merchant and executives.

### THE DECISION

The arbitrators unanimously decided to award DeLong its requested damages based upon the following:

Contract Terms: DeLong Contract 3006523 was signed and dated by DeLong's grain merchandiser and mailed to Beechwood on May 6, 2021. The terms of the contract state it is the seller's duty to immediately notify the buyer of any objections or disagreements with the stated terms or conditions. Beechwood's organic manager

emailed DeLong's grain merchandiser regarding discrepancies in the delivery and payment terms stated on the contract. In its email, Beechwood requested the desired terms and stated, "let me know if you wish to adjust or not". DeLong replied via email "we will adjust the shipment period. The payment terms are net cash receipt of grain." It was noted that these were more favorable terms than the "net 15" payment terms requested.

On page 5 of Beechwood's answer to DeLong's first argument is stated "thus Beechwood awaited DeLong's revised form." This indicates to the arbitrators that the parties had agreed to a contract in that Beechwood anticipated another contract confirming the amendment of the original contract. However, the email confirmation (delivered within an hour of Beechwood's notification) stated agreement to the terms requested by Beechwood and served as the amendment to the contract.

NGFA Grain Trade Rule 3(B) [Confirmation of Contracts]: Beechwood failed to send a confirmation of its own; therefore, the DeLong contract confirmation is binding upon both parties. After receiving DeLong's contract confirmation, Beechwood notified DeLong of differences in the terms and DeLong confirmed the updated terms via email. Given this, the arbitrators referred to NGFA Grain Trade Rules 4 and 5.

NGFA Grain Trade Rule 4 [Alteration of Contract]: The Email chain between the parties serves as expressed consent of both buyer and seller to satisfy the amendment to the contract.

NGFA Grain Trade Rule 5 [Electronic Communication]: An exchange of communications between the parties by electronic means constitutes acknowledgement of that means as a viable method of contractual communication.

Industry standards/trade practices: Beechwood received the first postal mailed contract but claims it did not receive any of the subsequent contracts mailed to Beechwood for signature. By Beechwood failing to send its own confirmation, it was bound by DeLong's original form combined with the electronic email amendments to that original contract.

The arbitrators reviewed the provided documents and utilized real market knowledge in determining whether or not DeLong's buyout on December 15, 2021, was appropriate and equitable. After taking all into consideration, the arbitrators determined that the buyout price calculated by DeLong was in fact the fair market value. The arbitrators have concluded that the buyout price was consistent with market conditions and pricing at the time of the buyout.

## THE AWARD

The arbitrators award to DeLong the requested \$337,500, with interest to begin accruing seven business days after the arbitrator's decision is final and received by the parties at the rate of 3.25% pursuant to NGFA Arbitration Rule 6(F).

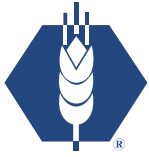
Decided: November 28, 2023

Submitted with the unanimous consent of the arbitrators, whose names appear below:

**Matthew Fitzhum**, *Chair*  
Manager of Co-Product Trading  
CHS Inc.  
Inver Grove Heights, MN

**Lee Anderson**  
Manager  
Ririe Grain and Feed Cooperative  
Ririe, ID

**Shaun Brooks**  
President  
F.W. Cobs Company Inc.  
St. Albans Bay, VT



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February 19, 2025

## ARBITRATION APPEAL CASE NUMBER 2963

**Appellant/Defendant:** Beechwood AgriServices, Inc., Parkhill, Ontario, Canada

**Appellee/Plaintiff:** The DeLong Co., Inc., Clinton, WI

### DECISION OF THE APPEALS COMMITTEE

The original three-member Arbitration committee unanimously agreed that a contract was formed between The DeLong Company (DeLong) and Beechwood Agri Services, Inc. (Beechwood) for the delivery of 30,000 bushels of organic soybeans during the fall of 2021. Beechwood failed to deliver any soybeans within the shipment period or contact DeLong about its intent to complete the contract. The original Arbitration Committee awarded DeLong \$337,500 in damages and interest as defined in NGFA Arbitration Rule 6(F). Beechwood appealed the Arbitration Committee's decision.

The Arbitration Appeals Committee, both individually and collectively, reviewed all the arguments and supporting documents provided in the record of the case for Arbitration Case 2963, which includes the findings and conclusions reached by the original Arbitration Committee. The Arbitration Appeals Committee further reviewed the briefs of the appellant and the appellee submitted in the appeal.

Negotiation of the terms and conditions in a trade occurs between the parties by verbal or electronic communication. If agreement is reached between the Buyer and Seller, a verbal contract is formed and is binding between the parties. The documents submitted show verbal agreement was reached stating Beechwood would sell 30,000 bushels of organic soybeans to DeLong on May 3, 2021. While cryptic, Beechwood sent an email with the wording, "OK. Contract in DeLong or quality name?", to which DeLong's merchandiser replied by email, "DeLong". This exchange clearly indicates that an understanding was reached between the parties concerning the trade. Exchange of information and details by email in the execution or modification of the terms of a contract is commonplace in the industry. This widely accepted method of contract formation is binding upon the parties, just as a verbal dialogue between traders, under NGFA Grain Trade Rule 5.

As called for in NGFA Grain Trade Rule 3 (B) [Confirmation of Contracts], DeLong mailed Contract Confirmation 3006523 to Beechwood. No documentation was submitted that Beechwood sent a contract confirmation to DeLong, and pursuant to NGFA Grain Trade Rule 3, DeLong's contract confirmation document is consequently binding upon both parties.

As noted by the original Arbitration Committee, Beechwood, after receiving the contract confirmation, emailed DeLong about clarifying the delivery period and payment terms. DeLong agreed to this alteration of the contract as noted in the Arbitration Committee's decision. When DeLong sent a revised

confirmation to Beechwood, the shipment period was listed as "October 1, 2021 – December 31, 2021", which encompasses the October/November delivery window that was agreed to by electronic communication between

the Buyer and Seller. Since the delivery period listed on the confirmation does not match what was agreed to, Beechwood claims that no contract exists. The Appeals Committee concludes this position is incorrect. There was no documentation presented that Beechwood must adhere to a structured shipping schedule over the entire shipping period. Had Beechwood wanted to ship all 30,000 bushels of organic soybeans in October, it would have been within the shipment period terms of the contract.

Beechwood did not deliver any organic soybeans by November 30, 2021, as agreed between the Buyer and Seller. After receiving no communication from Beechwood whether it intended to perform on the contract, on December 14, 2021, DeLong placed Beechwood in default for non-performance and invoked NGFA Grain Trade Rule 28 (A) [Seller's Non-Performance] (3), which states "*cancel the defaulted portion of the contract at fair market value as based on the close of the market the next business day.*" In an ill-defined, lightly traded market such as organic soybeans there is often a significant spread between the bid/ask price. The limited volumes traded also make it harder to define fair market value. DeLong used custom of the trade to refer to *The Jacobsen Fastmarkets Daily Digest* as a disinterested third-party publication to establish the fair market value in this dispute. The price used by DeLong to wash the contract is within Jacobsen's published range.

There clearly was a contract verbally agreed upon between the parties. In its appeal, Beechwood argues that DeLong could have mitigated damages had DeLong cancelled the contract earlier. NGFA Grain Trade Rule 28 (A) [Seller's Non-Performance] very specifically states concerning the responsibilities of the Seller:

*If the Seller fails to notify the Buyer of the Seller's inability to complete the contract, as provided above, the liability of the Seller shall continue until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted.*

Beechwood could have contacted DeLong to give notice Beechwood would not perform on the contract. But short of that notification from Beechwood, since the shipment period agreed to between the parties had not lapsed, DeLong could not cancel the contract.

## AWARD

The Arbitration Appeals Committee by unanimous agreement upholds the decision of the original Arbitration Committee and awards \$337,500 to The DeLong Co., Inc. from Beechwood AgriServices Inc. The Arbitration Appeal Committee further upholds that interest shall accrue as detailed in the original Arbitration Committee's decision until the award is paid in full by Beechwood AgriServices Inc.

Decided: January 24, 2025

Submitted with the unanimous consent of the appeal arbitrators, whose names appear below:

**Jay Matthews, Chair**  
CEO  
Prairieview Grain Trading  
Champaign, IL

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

**Robert Geers**  
VP of Merchandising  
Michigan Agricultural  
Commodities  
Lansing, MI

**Craig Haugaard**  
Grain Division Manager  
Superior Ag  
Huntingburg, IN

**Steve Nail**  
President & CEO  
Farmers Grain Terminal Inc.