



# 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

February 19, 2025

## CASE NUMBER 2996

**PLAINTIFF: THE ANDERSONS, INC., MIDDLEBURG, FL**

**DEFENDANT: KEVIN McCUBBIN D/B/A McCUBBIN FARMS, HODGENVILLE, KY**

## CASE NUMBER 2997

**PLAINTIFF: THE ANDERSONS, INC., MIDDLEBURG, FL**

**DEFENDANT: FRESH START FARMS, AND ITS GENERAL PARTNERS, RYAN D. BIVENS  
AND MISTY M. BIVENS, HODGENVILLE, KY**

## CASE NUMBER 2999

**PLAINTIFF: THE ANDERSONS, INC., MIDDLEBURG, FL**

**DEFENDANT: JONATHAN GASKINS, RUSSEL SPRINGS, KY**

### THE DECISION

This decision combines three cases between the plaintiff, The Andersons, Inc., and the defendants, Kevin McCubbin, Fresh Start Farms, and Jonathan Gaskins. The three cases have similarities and will be determined separately on their own merits. The parties agreed to the combination of these cases including for the purposes of an oral hearing.

The disputes include multiple contracts between the plaintiff and the defendants with various contract dates. The majority of these dates occurring between May 2020 and July 2020. The types of contracts included hedge-to-arrive and multiple long and short options strategies. Many of these strategies resulted in exercised options, which triggered subsequent obligations.

Complicating these cases was the direct involvement of a marketing firm and individual (collectively, “marketer”), who by his actions between the defendants and The Andersons, became the center of this dispute. However, the marketer was not a party to any of these disputes. Therefore, no testimony or evidence was provided by this individual or firm. No formal agreement between any of the parties and the marketer that would bind him to arbitration was provided to the arbitrators. The defendants did testify about a lawsuit filed against the marketer in the U.S. District Court of Kentucky.

All three defendants testified to the necessity of working through the marketers for the benefit of access to trucks and higher prices through market competition. Each defendant had prior grain transactions with The Andersons through the marketer as early as 2013, 2017, and 2019. The defendants were successful in convincing the arbitrators that several inappropriate actions and omissions were attributable to many employees of the plaintiff, its predecessor companies as well as the marketer. Multiple NGFA Grain Trade Rules were ignored and/or violated. However, all three defendants were also deficient in adhering to the same Trade Rules after signing emailed trade confirmations from The Andersons in January and February of 2021 to ratify the original transactions.

The grain markets rose substantially after the defendants entered the initial obligations. The defendants did not deny the fact that they defaulted on these lower priced obligations and sold their grain elsewhere for much higher prices. All three defendants expressed ignorance of how grain contracts worked and the terms of each signed contract as to why they defaulted on those contracts.

All three defendants relied on the marketer to trade their way out of these lower-priced obligations. Unfortunately, the result added more risk and cost to their portfolios. On multiple occasions, the plaintiff offered a settlement to the defendants that would have limited their losses had they agreed. Subsequent strategies deployed by the defendants at the marketer's advice substantially increased their losses.

The evidence provided by both the plaintiff and collectively the defendants was very poorly assembled. The transactions were all complex in initial and subsequent pricing and additional obligations being triggered.

It was of great benefit for the committee for these cases to have an oral hearing, giving the arbitrators an opportunity to question all stakeholders individually.

It is unfortunate that the marketer, who had implied authority to execute these transactions on the defendant's behalf, was not part of this dispute.

In all three cases it became clear during the oral hearing that the three defendants had given the marketer authority and, for purposes of these transactions, was acting as an agent/broker to enter transactions on the defendants' behalf. Oral testimony from the defendants as well as correspondence and transcripts provided in evidence at the oral hearing convinced the committee that this marketer was granted agent-like authority by the defendants. Representative for defendant Fresh Start Farms testified he asked the marketer to trade Fresh Start Farms' way out of these conditions. He admitted the strategies could be considered speculative. Additional testimony and text messages indicated the defendants knew they had taken speculative risk in their transactions that fell outside their production. Additionally, they confirmed they had volume sold above and beyond their ability to deliver, which exposed them to additional risk.

It is the committee's decision that the defendants understood the transactions they entered, and they became adverse when the market rallied much higher than their obligations. The committee also recognizes the significant deficiencies attributable to the plaintiff. There are several contracts where no proof of timely confirmation was presented with gaps between futures option's rolls. There are also several contracts that were signed by the plaintiffs. All the contracts signed by both the plaintiff and

defendants will be considered valid and enforceable, along with all subsequent obligations triggered by a fully executed confirmation.

Regarding “Flex Agreements:” Two of the Defendants (McCubbin and Fresh Start) signed an agreement called “Flex Agreement” directly with the plaintiff. This agreement contained terms that incorporate the NGFA Grain Trade Rules. It also includes terms that set aside certain Grain Trade Rules. Specifically, it removes the requirement for the customer to provide confirmation of amendments. Plaintiff Gaskins did not sign a Flex Agreement. Ultimately, the Flex Agreement did not materially affect the committee’s decision when it comes to these three arbitrations.

The Andersons argued that all three defendants entered into hedge-to-arrive and/or options strategies that represented physical deliveries with various delivery periods indicated on the contracts. Additionally, it was made clear that options contracts would exercise and convert to physical grain if held past options expiration. The defendants signed these contracts, making them enforceable and acknowledged their existence through their ratification. The committee determined that the defendants had the opportunity to reach out to The Andersons directly, outside of the marketer, but chose not to. By failing to contact The Andersons, and instead communicating exclusively with their agent, the committee determined that defendants knew or should have known their liability continued and subsequent rolls were valid and enforceable.

Despite The Andersons’ failure to send timely confirmations as outlined in NGFA Grain Trade Rule 3 and subsequent rolls and amendments outlined in Grain Trade Rule 4. The committee could not look past the fact that, through the marketer, the defendants’ liability continued past the original shipment periods. As a result, as outlined in NGFA Grain Trade Rule 28, the Andersons appropriately rolled these contracts at various inverses and carries represented by the futures market at the times of the roll. The Andersons communicated these rolls/amendments to the defendants’ agent and cancelled the contracts when adequate assurances were not provided in February of 2022.

This arbitration committee unanimously finds in favor of The Andersons for the damages requested and outlined in the arguments for each case. However, this committee finds each party should be responsible for its own attorney’s fees, and no award for interest shall be granted.

<b>THE AWARD</b>
------------------

Case 2996: The arbitrators award \$615,087.50 in damages to The Andersons, Inc. No interest or legal fees are awarded.

Case 2997: The arbitrators award \$1,218,506.44 in damages to The Andersons, Inc. No interest or legal fees are awarded.

Case 2999: The arbitrators award \$714,872.15 in damages to The Andersons, Inc. No interest or legal fees are awarded.

Decided: January 14, 2025

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

**Joe Kapraun, *Chair***  
Executive Director – Grain  
Marketing  
GROWMARK Inc.  
Bloomington, IL

**Jeremy Burkhart**  
Chief Executive Officer  
United Quality Cooperative  
Minot, ND

**Dan Suarez**  
Senior Merchandiser  
The Scoular Company  
Lake Mary, FL