



December 9, 2024

CASE NUMBER 3089

**PLAINTIFF: HANSEN-MUELLER CO.
OMAHA, NE**

**DEFENDANT: COMMERCIAL LYNKS INC.
ALEXANDRIA, VA**

STATEMENT OF THE CASE

The plaintiff, Hansen-Mueller Co., and the defendant, Commercial Lynks Inc., entered into a contract for grain in July 2021.

Commercial Lynks sent a contract confirmation to Hansen-Mueller, dated July 14, 2021. This contract confirmation, labelled as contract number “USDA 450,” provided for 2,500 MT grade #2 sorghum for delivery by rail to “Southern Gulf-Houston TX” with a shipment period of September 1 through September 15, 2021. Commercial Lynk’s contract confirmation also stated, “Governing Trade Rules: National Grain and Feed Association.”

Hansen-Mueller included copies of its own contract confirmations with the complaint it filed in this case. According to an affidavit provided by Commercial Lynks from a former employee of Hansen Mueller, these were printed from Hansen Mueller’s internal files, and due to a computer error, multiple confirmations were not mailed to customers by Hansen Mueller, including for the trade in this case.

Based upon the arguments provided by both parties, the arbitrators determine that the contract confirmation sent by Commercial Lynks to Hansen-Mueller controls this case. Pursuant to NGFA Grain Trade Rule 3(B), if either the buyer or the seller fails to send a confirmation, the confirmation sent by the other party is the binding contract upon both parties, unless the confirming party has been immediately notified by the non-confirming party, as described in Rule 3(A), of any disagreement with the confirmation received.

Therefore, this arbitration committee affirms that NGFA Trade Rules and NGFA Arbitration apply to this case. Additionally, both the plaintiff and the defendant are NGFA members.

The following are further details regarding this contract confirmation:

1. In a subsequent rebuttal argument, Hansen-Mueller alleged malicious activity by a former (terminated) employee, including providing copies of Hansen-Mueller’s version the contract confirmations to Commercial Lynks after the employee’s termination. In its surrebuttal, Commercial Lynks argued it was Hansen-Mueller itself that had included copies in their initial complaint.

2. The contract confirmation “USDA 450” sent by Commercial Lynks incorrectly listed Hansen-Mueller as the buyer of the grain and Commercial Lynks as the seller. Although there are discrepancies between the two parties about when the plaintiff notified the defendant of this error, neither party disputes that the buyer and seller are incorrectly reversed in the contract confirmation.
3. The contract confirmation “USDA 450” sent by the defendant also incorrectly stated the contract quantity as 2,500 MT instead of 2,000 MT. Although there are discrepancies between the two parties on when the plaintiff notified the defendant of this error, neither party disputes that the correct shipment quantity is 2,000 MT.
4. No contract confirmation amendment was issued by either party to reflect corrections for the items described above in paragraphs (2) and (3). The plaintiff proceeded to ship sorghum acting as the proper seller and the defendant unloaded the sorghum acting as the proper buyer.

The plaintiff loaded and billed rail cars, with arrival dates from September 14 through October 11, 2021, at the delivery point (Southern Gulf).

The defendant accepted and unloaded these rail cars.

At no point, either on or after the end of the shipment period (September 15, 2021), did the plaintiff notify the defendant of seller non-performance pursuant to NGFA Grain Trade Rule 28(A), which states, “If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Buyer...”

The rule further states:

If the Seller fails to notify the Buyer of his inability to complete his 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. In such case it shall then be the duty of the Buyer, after giving notice to the Seller to complete the contract at once to:

- (1) Agree with the Seller upon an extension of the contract; or
- (2) Buy in for the account of the Seller, using due diligence, the defaulted portion of the contract; or
- (3) Cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

Commercial Lynks failed to notify Hansen-Mueller of non-performance until after the cars arrived at the destination and were unloaded. This notification was made by Commercial Lynks on October 29, 2021, three days after the last car arrived. Commercial Lynks further argued that it had no other option but to wait.

Commercial Lynks also argued that the real ending of the shipment period is September 10, 2021, five days earlier than September 15, 2021, to allow time to process and position the grain for its sales customer (USDA). Commercial Lynks stated that Hansen-Mueller is to be held liable for the late charges that were deducted by USDA for all deliveries that occurred after September 10, 2021.

Commercial Lynks delayed the final payment to Hansen-Mueller and withheld those late fees that USDA assessed against Commercial Lynks. The total amount withheld was \$93,071.67. Commercial Lynks additionally argued that Texas law applies, which allows for acceptance of the delivered grain, followed by the ability to recover damages by deducting from grain payments.

THE DECISION:

The arbitrators reached the following unanimous conclusion:

Despite the errors in the contract confirmation involving volume and designation of the buyer and seller, contract confirmation “USDA 450” sent by the defendant was the binding contract for both parties, pursuant to Rule 3(B).

The arbitration committee affirms that NGFA Trade Rules and NGFA Arbitration apply to this case, as referenced in the contract confirmation: “Governing Trade Rules: National Grain and Feed Association.” The defendant’s contract confirmation “USDA 450” did not include reference to Texas state law (or any other state law).

The contract confirmation clearly states the end of the shipment period was September 15, 2021. Thus, the defendant’s argument for September 10, 2021, as an end date is soundly rejected. If the buyer wanted the grain delivered by September 10, 2021, that term should be negotiated upfront with the seller, and that specific date stated in the contract confirmation.

The defendant’s argument that it had “no choice” but to wait for the late grain is also soundly rejected. Rule 28(A) clearly lists the options available to the buyer. If the buyer intended to accept the late shipped grain at a discount, then the buyer should have negotiated with the seller for an extension of the contract with those terms established. The buyer failed to do so and failed to notify the seller of non-performance until after the grain was fully shipped.

The defendant had a contract with USDA which included the provision for late fees. The defendant attempted to improperly pass the risk of these fees onto the plaintiff, who was not a party to the contract with USDA. If the defendant wished to assess late fees on grain shipments, those should be clearly included in a mutually agreed upon contract.

Therefore, it was incorrect to deduct late fees from Hansen-Mueller’s grain payment.

THE AWARD

The arbitrators ruled in favor of Hansen-Mueller Co. in the amount of \$93,071.67.

The committee declined to include any interest or other fees in this award.

Decided: October 14, 2024

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

Andrew Fullerton, *Chair*
Director of Projects Commercial
Bartlett Grain Company
Kansas City, MO

Douglas Balvin
General Manager
Canby Farmers Grain Co.
Canby, MN

James Lee Hardy III
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St. Hilare, MN