National Grain and Feed Association
Arbitration Decision
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November 19, 2025

CASE NUMBERS 2892, 2896, 2905, 2913, 2925, 2970, 2974, 3014, 3015, 3117, 3118, 3119, 3120, 3121, 3122, 3123

PLAINTIFF: THE ARC GROUP, LLC, LINCOLN, NE

DEFENDANTS: JUSTIN D. HEINLE, BISMARK, ND (CASE NO. 2892)
KEVIN W. JOHNSON, PLAZA, ND (CASE NO. 2896)
SCOTT E. MATTIS, HETTINGER, ND (CASE NO. 2905)
DONNA LAUFER, MOTT, ND (CASE NO. 2913)
GARRET SWINDLER, MOTT, ND (CASE NO. 2925)
SCOTT KATUS, WATAUGA, SD (CASE NO. 2970)
MESSER BEAVER CREEK RANCH, GP, RICHARDTON, ND (CASE NO. 2974)
LEONARD KAUFMAN, REGENT, ND (CASE NO. 3014)
STAN BLICKENSDERFER, MOTT, ND (CASE NO. 3015)
BRANDON AND LACY SCHATZ, NEW LEIPZIG, ND (CASE NO. 3117)
BLAKE ULRICH, ELGIN, ND (CASE NO. 3118)
FRIED FARM & RANCH, LLC, BISON, SD (CASE NO. 3119)
ESTATE OF MITCH MILLER, HETTINGER, ND (CASE NO. 3120)
TERRY MILLER, HETTINGER, ND (CASE NO. 3121)
CHRISTOPHER CARLSON, MOTT, ND (CASE NO. 3122)
JOSHUA JOHNSON, PLAZA, ND (CASE NO. 3123)

THE DECISION

Plaintiff The ARC Group, LLC ("ARC") brought actions against 16 producers ("Producers"), alleging breaches of various contracts. A federal court referred the matters for arbitration. Because of the similarity of the cases involving a common plaintiff, the parties consented to consolidating the matters to be heard in a single proceeding. All parties executed the NGFA arbitration services agreements.

In addition to the presentations contemplated by the NGFA Arbitration Rules, Producers filed a separate motion and arguments urging that the NGFA lacked jurisdiction of the matters because ARC had not been a member of the NGFA at the time when the disputes arose or when the parties entered the contracts at dispute in this matter. The arbitrators reviewed the filings and conducted an on-line hearing of the jurisdictional arguments.

CHRONOLOGY

2020: ARC and the Producers engaged in discussions that result in the creation of the contract documents that are the subject of this arbitration. During this time, the NGFA had a webpage explaining that to invoke NGFA jurisdiction "The member-party must also have been a member at the time the arbitration complaint is filed, and at the time the underlying dispute arises" (the "Old Policy").

January 6, 2021: A lawyer for defendants Heinle (2892), Fried (3119), Mitch Miller (now deceased) (3120), Terry Miller (3121), and Carlson (3122) sent a letter disputing ARC's characterization of their clients' obligations under the contract documents.

February 15, 2021: A lawyer for defendant Laufer (2913) sent a letter disputing ARC's characterization of his clients' obligations under the contract documents.

February 24, 2021: ARC applied for membership to the NGFA.

February 25, 2021: The NGFA welcomed ARC to the NGFA.

March 1, 2021: The NGFA updated its website to show that ARC was a member of the NGFA.

April 9, 2021: ARC filed for NGFA arbitration against Heinle (2892).

May 6, 2021: ARC filed for NGFA arbitration against Kevin Johnson (2896).

May 24, 2021: ARC filed for NGFA arbitration against Mattis (2905).

September 13, 2021: ARC filed for NGFA arbitration against Swindler (2925).

Effective October 1, 2021, the NGFA Board of Directors adopted a policy stating that to invoke NGFA jurisdiction "The member-party must also have been a member at the time the arbitration complaint is filed, and at the time the underlying contract or transaction was agreed upon or formed" (the "New Policy").

January 20, 2022: ARC filed for NGFA arbitration against Katus (2970).

March 6, 2023: Upon ARC's motion, a federal court referred Producer claims to the NGFA for arbitration.

March 2023: ARC filed for NGFA arbitration against Messer (2974), Laufer (2913), Kaufman (3014), Blickensderfer (3015), Schatz (3117), Ulrich (3118), Fried (3119), Estate of Mitch Miller (3120), Terry Miller (3121), Carlson (3122) and Joshua Johnson (3123).

DISCUSSION

ARC first contends that Producers waived their right to contest jurisdiction because the federal court referred the claims to NGFA arbitration, and Producers consented to having their claims submitted to NGFA arbitration. The federal court, however, specifically deferred the jurisdictional decision to the NGFA arbitrators. Furthermore, Producers clearly challenged NGFA jurisdiction from the onset. For these reasons, the arbitrators find that Producers did not waive challenges to NGFA arbitration.

ARC next contends that the plain wording of the NGFA arbitration rule requires the NGFA to exercise jurisdiction over the cases. At all times relevant to the proceedings, NGFA arbitration rule 1(A) has recited, in pertinent part:

> (A) NGFA may consider a case involving a dispute between or among the following:
>
> > (2) An Active … member of the NGFA and another party, by consent of both parties or by court order.

When a party to a contract asserts the existence of a dispute involving an active NGFA member in good standing and all parties have signed a contract referring to NGFA arbitration, they create a rebuttable presumption that the NGFA may and should take the case.

From time to time the NGFA board of directors adopted and published policies on the Frequently Asked Questions ("FAQ") page of its website to guide parties and arbitrators on questions of its jurisdiction. The policies demonstrate that the NGFA wants to assure (1) that either side of a dispute may invoke NGFA jurisdiction, rather than leave the choice of forum to the entity that could create or destroy jurisdiction by paying or withholding dues and (2) that the forum is available to bona fide members of the NGFA who demonstrated a continuous stake in the association, rather than to entities that may jump into and out of the NGFA, effectively enlisting the arbitration services of experienced industry volunteers to help with dispute resolution solely when the need arises.

For many years ahead of the events that gave rise to these disputes, the NGFA board of directors determined that its objectives could be met upon a finding that "[t]he member-party must also have been a member at the time the arbitration complaint is filed, and at the time the underlying dispute arises" (the "Old Policy"). This Old Policy was published on the NGFA FAQ page.

The NGFA board of directors later refined the definition of cases subject to its jurisdiction from the slippery time of when the "underlying dispute arises" to the more readily verifiable time of when the "underlying contract or transaction was agreed upon or formed*" (the "New Policy"). The asterisk pointed to a note indicating that this New Policy became effective Oct. 1, 2021.

The arbitrators believe that the rules would allow their exercise of jurisdiction if read without any regard to the Old Policy or New Policy. They note, agree and adopt the board or directors' determination, however, that the NGFA should not exercise jurisdiction in these cases unless the member, the dispute and the contracts meet the specified criteria of the applicable Old Policy or New Policy.

Cases Excluded by the New Policy

Twelve cases filed after October 1, 2021, involve contracts dated before ARC joined the NGFA on February 25, 2020. Under the New Policy, the arbitrators decline to exercise jurisdiction over Katus (2970), Messer (2974), Laufer (2913), Kaufman (3014), Blickensderfer (3015), Schatz (3117), Ulrich (3118), Fried (3119), Estate of Mitch Miller (3120), Terry Miller (3121), Carlson (3122) and Joshua Johnson (3123).

Cases Excluded by the Old Policy

The Old Policy directs arbitrators to exclude matters in which the dispute arose before the NGFA member joined the association. The parties and their representatives frequently discussed what they perceived their rights and responsibilities to be. Sometimes the discussion led to contract amendments. Sometimes the discussion did not lead to amendments.

The arbitrators found two occasions upon which communications unequivocally demonstrated the existence of disputes. On January 6, 2021, an attorney representing Heinle (2892), Fried (3119), Mitch Miller (now deceased) (3120), Terry Miller (3121), and Carlson (3122) wrote ARC to claim that his clients owed no duties to ARC under the contract documents. An attorney for Laufer (2913) wrote a similar letter on February 15, 2021. The arbitrators find that disputes between the parties existed on or before the dates of these letters, which were before ARC became a member of the NGFA and that jurisdiction should be declined under the Old Policy. Of these six cases, Heinle (2892) is excluded under the Old Policy, and Laufer (2913), Fried (3119), Estate of Mitch Miller (3120), Terry Miller (3121) and Carlson (3122) are excluded under both the New Policy and the Old Policy.

Cases Subject to Jurisdiction

This leaves Kevin Johnson (2896), Mattis (2905) and Swindler (2925) as defendants for whom ARC filed petitions before the October 1, 2021 New Policy effective date and from whom the arbitrators have seen insufficient evidence to determine that a dispute existed before ARC joined the NGFA on February 25, 2020, which would cause the arbitrators to exclude these cases under the Old Policy. The arbitrators believe that the conduct of each defendant must be examined separately, and one defendant's actions to dispute contracts cannot be imputed to another defendant. In this regard, the arbitrators found no evidence of Mattis and Swindler disputed their contracts prior to ARC joining the NGFA. Kevin Johnson requires more analysis due to the two recorded phone calls he had with ARC in late 2020. However, there were no statements made in either call that contracts would not be honored or demanding cancellation. The arbitrators do not believe that the frustrations voiced in either phone call rose to the level of a dispute. For these reasons, the arbitrators find that these three cases are subject to NGFA jurisdiction.

Decided: December 4, 2024

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

Simon Buckner, *Chair*
Senior Corporate Counsel
Bartlett Grain Company
Kansas City, MO

Lynn Krueger
Director, Raw Material Food
and Industrial
Ingredion Incorporated
Westchester, IL

Todd Lafferty
Co-Chief Executive Officer
and General Counsel
Wheeler Brothers Grain Company
Watonga, OK

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November 19, 2025

CASE NUMBER 2896

PLAINTIFF: THE ARC GROUP, LLC
LINCOLN, NE

DEFENDANT: KEVIN W. JOHNSON
PLAZA, ND

CASE NUMBER 2905

PLAINTIFF: THE ARC GROUP, LLC
LINCOLN, NE

DEFENDANT: SCOTT E. MATTIS
HETTINGER, ND

CASE NUMBER 2925

PLAINTIFF: THE ARC GROUP, LLC
LINCOLN, NE

DEFENDANT: GARRET SWINDLER
MOTT, ND

STATEMENT OF THE CASE

Procedural Background

Fifteen producers ("Defendants") sued the ARC Group, LLC ("ARC") for claims related to risk management consulting services and HTA (hedge-to-arrive) grain contracts. ARC asked for and received a court order asking the National Grain and Feed Association ("NGFA") to arbitrate the grain contracts, after which ARC filed fifteen arbitration actions that, by the consent of the parties, were consolidated into a single consolidated arbitration. The Defendants objected to NGFA's jurisdiction, arguing that ARC had not been a member of NGFA as required by the NGFA Arbitration Rules. NGFA appointed an arbitration panel, which conducted an oral hearing on the jurisdictional question and ruled that NGFA had jurisdiction on three of the disputes, but that it did not have jurisdiction on twelve of the disputes.

On April 24, 2025, ARC and the three remaining defendants, Kevin Johnson ("Johnson"), Garret Swindler ("Swindler"), and Scott Mattis ("Mattis") (collectively referred to as the "Producers") conducted a hearing on the remaining issues.

Factual Background

ARC calls itself a risk management consultant that offers marketing advice to grain producers. ARC's consulting agreement recited that it would, in good faith, provide consulting services for the Producers, in which it would develop and implement a marketing plan. As part of these consulting agreements, the Producers supplied information about the size of their operations and numbers of bushels of the commodities they wished to commit to the program.

ARC executed the marketing plan by offering a "cash grain contract" in which ARC agreed to purchase grain at a "'futures contract month/year' or futures reference price," plus a basis to be established later and various additional fees, after which it would resell the grain to a destination specified by the producer.

The Producers accepted, signed, and performed upon electronic HTA contracts for several years. In 2020 and 2021, however, grain prices rose, and the Producers repudiated the outstanding contracts. Johnson repudiated his contracts on April 12, 2021, and ARC closed out his positions on April 13, 2021. Mattis repudiated his contracts on April 16, 2021, and ARC closed out his positions on April 19, 2021. Swindler repudiated his contracts on April 23, 2021, and ARC closed out his positions on April 26, 2021.

Summary of Argument

ARC presented the case as being one in which the Producers signed the contracts but failed to perform. The Producers argued that they should be excused from the contracts because: (a) ARC was a fiduciary obligated to protect Producer's interests; (b) Producers relied on ARC's fiduciary obligations rather than read or ask about contracts that they professed not to understand; and (c) ARC representatives agreed that some of the contracts were unreasonable.

THE DECISION

Analysis

Fiduciary Relationship

A fiduciary relationship arises when one party, the fiduciary, agrees to act on behalf of another party, in the best interests of that party. In the instant cases, the consulting agreement does not refer to a fiduciary relationship and the grain contracts specifically disclaim the existence of a fiduciary relationship.[1]

[1] The contracts provide, "Seller understands and agrees that any statements, information, opinion, or advice expressed by Buyer or Buyer's employees or agents shall in no way operate to create any managerial or fiduciary obligation between Buyer and Seller." Additional Terms at ¶7.

The arbitrators find no fiduciary relationship between the parties.[2]

Cash grain contracts

The parties entered a series of "cash grain contracts" in which the price to be paid was a function of a reference futures price, a basis and a number of additional factors. The Producers all testified they intended to deliver on the bushel amounts stated in the HTA contracts when they e-signed them. By repudiating these contracts, the Producers had the opportunity to sell their grain in the open market at higher prices than they would have received had they delivered on their HTA contracts.[3] The arbitrators find that the HTA contracts are enforceable.

Cash grain contracts that referred to call options

A few of the cash grain contracts reference a call option as a pricing mechanism. Grain buyers sometimes offer to buy grain at an "enhanced" price, with the understanding that if an option price moves above a particular value, the seller will deliver additional bushels of grain at a pre-determined price. This gives the buyer an option to purchase additional grain at that pre-determined price. Such contracts will refer to the number of additional bushels, the circumstances under which the buyer may exercise the option to purchase the additional bushels and the price the seller will pay for the additional bushels. However, because these contracts do not refer to additional bushels, do not specify a price to be paid for additional bushels and specifically disclaim that there is an option,[4] the arbitrators cannot conclude that the Producers agreed to deliver additional bushels, under any particular circumstances, at any particular price. The arbitrators accept the contractual characterization of the option as being part of a pricing mechanism, rather than as being something that created an obligation to deliver what would otherwise be an unspecified number of additional bushels at an unspecified price upon the occurrence of an unspecified contingency.

Cash grain contracts that were call options

Several of the "cash grain contracts" were commodity call options. ARC, for any of several reasons suggested in the evidence, created and delivered an additional set of contracts that were pure call options. The arbitrators, for a variety of reasons, decline to enforce these contracts.

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[2] The arbitrators agree with Producers that the case Asa-Brandt, Inc. v. ADM Investor Services, Inc. 344 F.3d 738 (8th Cir. 2003) contains important guidance for this case. In that case, a jury determined that when a co-op wrote an HTA contract for one of its members, the relationship and disparity of knowledge between the parties created fiduciary obligations. Producers cite the case for the proposition that the buyer of HTA grain whose knowledge is superior to the seller has fiduciary obligations to his seller. The court, however, did not determine that the parties to HTA contracts were bound by a fiduciary relationship. The court said only that it declined to disturb the jury's finding that such a relationship existed in that case.

Because the relationship between ARC and the Producers is unlike the relationship between a co-op and its members, the finders of fact in this arbitration—the arbitrators—have determined that no such relationship exists in these cases.

[3] Irrespective of whether the Producers DID sell their grain at a higher price, their decision to repudiate the contracts after market prices had risen drove up the number of dollars at stake in this controversy.

[4] The contracts provide that, "ENTERING INTO THIS TRANSACTION DOES NOT RESULT IN SELLER … HAVING A FUTURES OR OPTIONS POSITION….. THE [CONTRACT] EMPLOYS FUTURES/OPTIONS AS A GRAIN PRICING MECHANISM. THIS IS NOT A FUTURES/OPTIONS CONTRACT."

There was evidence that these options were communicated to the Producers, in the words of an ARC representative, for "some premium" to make another "trade cheaper" or that these were re-papering pre-existing trades, rather than to set a price for which additional grain would be delivered. The arbitrators find that these call options were presented in a confusing manner purportedly tied to contracts not intended to be settled by physical delivery of the commodity.[5]

If, on the other hand, the parties did intend to settle the options by way of physical delivery, there was evidence to the effect that ARC management deemed the transactions to be "super aggressive," things that ARC management would "never advise" and "never recommend," suggesting that perhaps these contracts were the result of "wool [being] pulled over people's eyes." Considered most charitably, ARC's marketing plan was confusing, consisting, in part, of advice and contracts that its principal said that it would "never" offer. Having determined that they will not enforce the options, the arbitrators do not need to measure ARC's marketing activities against any particular legal or contractual standard.

Calculation of Damages

Cash Grain Contracts

NGFA Grain Trade Rule 28(A) provides that when a seller cannot or will not perform, his liability for price changes continues until he notifies the buyer that he will not perform or until the buyer can determine whether the seller has defaulted. ARC calculated its damages on HTA contracts as being (a) the loss on the reference future contract between the contract date and the date ARC closed out the contract after it was notified of repudiation, in accordance with Rule 28(A), and (b) certain expenses and fees specified in the HTA contracts. The Producers offered no objection to the figures or calculations, and the arbitrators find the results to be within the realm of reasonableness. [6]

Call Options

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[5] The federal Commodity Exchange Act (CEA) and the Commodity Futures Trading Commission (CFTC) regulate commodity futures trading in the United States. Generally speaking, the CEA requires commodity option contracts to be traded on regulated exchanges. 7 U.S.C. § 6; 17 CFR § 32. The rules contain an exception for "trade options" in which "a producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof" offers or enters "into the commodity option transaction solely for purposes related to its business and (3) the commodity option must be intended to be physically settled, so that, if exercised, the option would result in the sale of an exempt or agricultural commodity for immediate or deferred shipment or delivery." 7 CFR § 32.3(a).

The trade option exception authorizes commodity option transactions between producers, grain companies and end users when the parties intend physical settlement of the transaction, but not—as was the case here—where the transaction was not intended to result in a physical settlement.

[6] The arbitrators struggled to reconcile some of ARC's claims and calculations with its contracts. Ultimately, the arbitrators decided that if ARC presented numbers and the Producers offered no objections, they would use ARC's numbers because (a) ARC cannot object to the use of its numbers, (b) the Producers cannot raise a new topic on appeal, and (c) any errors in ARC's damage calculations appeared to be minor.

The arbitrators decline to award ARC its loss on the call options: Johnson contract number 29238, Mattis contract number 29223, and Swindler contract numbers 29202 and 29203.

THE AWARD

Damages Award

The arbitrators award damages as follows:

To The ARC Group, LLC, from Kevin W. Johnson:

Number	Commodity	Bushels	Contract Price	Cancellation Price	HTA+Roll Fees	Loss
27109	YSB	15,000	$8.9575	$11.74	$0.08	$42,937.50 less payment of $20,868.75 = $22,068.75
27478	Wheat	30,000	$5.49	$6.64	$0.10	$37,425.00
27839	Wheat	40,000	$5.69	$6.5725	$0.14	$40,800.00
27918	Wheat	30,000	$5.71	$6.64	$0.11	$31,200.00
29731	YSB	5,000	$8.86	$12.5474	$0.10	$18,925.00
TOTAL						**$150,418.75**

To The ARC Group, LLC, from Scott E. Mattis:

Number	Commodity	Bushels	Contract Price	Cancellation Price	HTA+Roll Fees[7]	Loss
24983	Wheat	20,000	$6.3025	6.74	$4,000.00	$12,750.00
26073	Wheat	35,000	$5.9825	6.74	$6,650.00	$33,162.50
26517	Corn	75,000	$3.2509	6.9675	$4.500.00	$283,245.00 +23,898.77
27513	Wheat	40,000	$5.49	6.82	$5,200.00	$58,400.00
27535	Corn	38,235	$4.2244	5.185	$4,500.00	$40,169.70[8]
27934	Wheat	50,000	$5.71	6.82	$5,500.00	$61,000.00
30038	Canola	400 MT	$517.80	659.30	$4,000.00	$48,355.77
TOTAL						**$560,981.74**

[7] The contracts referred to certain fees, but the Mattis contracts supplied as exhibits almost invariably omitted subsection 2.2 (Basis), 2.3 (Rolling Charges) 2.4 (Service Fee), 2.5 (Futures/Options Account) and the first part of Section 3 (Delivery Period). Fees were included in the Mattis invoice exhibits, but they could not be tied back to his contracts.

[8] ARC determined that 38,235 bushels x a loss of $0.9606 ($5.185 - $4.2244)/bushel, plus fees of $4500 added up to $40,169.70. The arbitrators agreed that the numbers totaled to $41,228.54. The arbitrators considered adjusting the claim to show that ARC must have intended to claim total fees of $0.09/bushel times 38,235 bushels or $3441.15, a solution that would make the numbers add up to $40,169.70. By a majority consensus, the arbitrators elected to leave the numbers alone, reflecting that no party had actually performed the arithmetic.

To The ARC Group, LLC, from Garret Swindler:

Number	Commodity	Bushels	Contract Price	Cancellation Price	HTA+Roll Fees	Loss
26574	Corn	40,000	$3.2984	$4.295	$3,600.00	$43,464.00
27484	Wheat	50,000	$5.4925	$7.645	$5,000.00	$112,625.00
27533	Corn	39,366.5158	$4.2564	$5.61	$3.542.99	$56,829.50
27533	Corn	10,633.4842	$4.2564	$4.2964	$957.01	$1,382.35
27944	Wheat	50,000	$5.71	$7.645	$5,500.00	$102,250.00
29384	Wheat	20,000	$5.79	$7.645	$2,000.00	$39,100.00
29469	Corn	50,000	$3.99	$5.73	$4,500.00	$91,500.00
29811	Corn	40,000	$4.1125	$5.73	$3,600.00	$68,300.00
Total						**$515,450.85**

Interest and Attorneys' Fees

NGFA Arbitration Rule 6(F) provides that the arbitrators "may include an amount of interest in an award. If interest is awarded, unless otherwise provided by agreement between the parties, the applicable rate of interest shall be the Prime Rate as published in the Wall Street Journal on the date the case was filed." ARC did not present – and the arbitrators cannot find – any evidence that the Producers agreed to pay interest or any other sort of late fee.

The NGFA Arbitration cases against the Producers were filed May 6, 2021 (Johnson), May 24, 2021 (Mattis), and September 13, 2021 (Swindler). The applicable Prime Rate on all of these dates was 3.25%. Pursuant to NGFA Arbitration Rule 6(F), the arbitrators therefore apply simple interest of 3.25% per year as the interest rate on damages beginning on April 13, 2021, for Johnson, on April 19, 2021, for Mattis, and on April 26, 2021, for Swindler until the award is paid. The arbitrators decline to award attorneys' fees to any party.

Decided: September 30, 2025

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

Simon Buckner, *Chair*
Senior Corporate Counsel
Bartlett Grain Company
Kansas City, MO

Lynn Krueger
Director, Raw Material Food
and Industrial
Ingredion Incorporated
Westchester, IL

Todd Lafferty
Co-Chief Executive Officer
and General Counsel
Wheeler Brothers Grain Company
Watonga, OK