



National Grain and Feed Association Arbitration Decision

www.ngfa.org | www.ngfa.org/decisions

1250 I (Eye) Street, N.W., Suite 1003
Washington, DC 20005-3922

P: (202) 289-0873
F: (202) 289-5388

August 23, 2016

CASE NUMBER 2743

**PLAINTIFF: CONSOLIDATED GRAIN AND BARGE CO.
GLADSTONE, IL**

**DEFENDANT: MIKE BAKER
DOUDS, IA**

STATEMENT OF THE CASE

The parties in this case, Consolidated Grain and Barge Co. (CGB) and Mike Baker (Baker), agreed by telephone on March 7, 2014, to the purchase and sale of 7,000 bushels of non-GMO soybeans for the 2014 crop year (the “Grower Agreement”). At this time, the parties also agreed to a “target price offer” of \$12.05 per bushel for 4,000 bushels of #1 yellow soybeans. On April 1, CGB advised that the target price offer for the 4,000 bushels was filled and issued purchase contract confirmation number 0149106.

The parties do not dispute that they entered into both the Grower Agreement and contract 0149106. Nor do the parties dispute that they subsequently agreed to cancel the Grower Agreement. The dispute in this case concerns contract 0149106.

CGB claims that Baker repudiated and authorized cancellation of contract 0149106, but failed to pay the resulting cancellation damages. CGB states it cancelled the contract at fair market value on May 22, 2014, pursuant to NGFA Grain Trade Rule 28(A)(3). CGB claims it incurred damages totaling \$2,920 based upon a cancellation price of \$12.78 per bushel (versus the contract price of \$12.05 per bushel) for the 4,000 bushels. However, Baker claims that he never authorized or agreed to cancel contract 0149106. Baker argues that he should still have been able to deliver against contract 0149106.

THE DECISION

The arbitrators noted that the Grower Agreement is not an issue in this case because both parties agree that it was cancelled.

With respect to contract 0149106, the arbitrators concluded that CGB’s claim that both parties agreed to cancel this contract is not verifiable. The arbitrators noted the sequence of events and uncertainty regarding the various telephone conversations between the parties that followed the issuance of contract 0149106.

The parties agree they spoke by telephone on May 16, 2014. In its first argument presented in this case, CGB claimed that during this conversation Baker repudiated both contracts and requested that they be

cancelled. CGB provided with its first argument an affidavit from its employee specifically stating that Baker requested cancellation of his agreement with CGB during this conversation in response to CGB's request for Baker to sign and return the Grower Agreement and contract 0149106. CGB argued that it subsequently cancelled the agreements on May 22 and invoiced Baker for damages.

In his argument, Baker disputed that he cancelled contract 0149106 during the May 16 telephone conversation. The time lapse between the May 16 telephone conversation and the claimed May 22 contract cancellation was also noted. Baker claimed that during this telephone conversation he merely indicated he would not sign the Grower Agreement during the timeframe demanded by CGB. Baker stated he subsequently received a May 22 settlement sheet, but it was confusing and he did not understand as it was not clear what the settlement reflected. On July 30, CGB followed up with a written notification and explanation of its cancellation of the contract.

In its rebuttal argument, CGB presented another affidavit from the same employee who provided the first affidavit, this time stating that the May 16 telephone call only involved the Grower Agreement. According to the second affidavit, the agreement to cancel contract 0149106 occurred during an additional telephone conversation on May 22, 2014, which resulted in CGB's cancellation of the contract 0149106 on May 22.

Baker insists that he never authorized or agreed to cancel contract 0149106 and he merely stated that he would not sign the written Grower Agreement during the timeframe demanded by CGB. Baker maintains he had acquired and planted sufficient seed to fulfill the agreements with CGB. Baker argues that CGB prematurely and improperly cancelled contract 0149106 and that at the time of this dispute, Baker still had the soybeans available to sell to CGB.

Given the inconsistency and uncertainty surrounding the telephone conversations, the timing of CGB's cancellation of contract 0149106 and whether Baker approved the cancellation of the contract, the arbitrators could not sufficiently determine whether the contract was cancelled by mutual agreement or whether CGB complied with NGFA Grain Trade Rule 28(3).

On Baker's claim that CGB should honor contract 0149106, the arbitrators also could not find sufficient reason that Baker should be allowed to deliver against contract 0149106. Baker never signed contract 0149106. Nor did Baker present any written indication that he attempted to deliver against contract 0149106 or challenge CGB's cancellation of that contract.

THE AWARD

The arbitrators declined to award damages to either party in this case.

Decided: July 26, 2016

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

Bill Ahlbrecht, *Chair*
Assistant General Manager
Ag Partners Coop
Goodhue, MN

Brentt Roberts
Grain Merchant
United Grain Corporation
Vancouver, WA

Britt Shipley
Grain Merchandiser &
Fertilizer Procurement
CoMark Grain Marketing LLC
Cheney, KS