



January 21, 2022

CASE NUMBER 2823

PLAINTIFF: M. RANDY RICE, CHAPTER 7 TRUSTEE FOR TURNER GRAIN MERCHANDISING, INC. BRINKLEY, AR

DEFENDANT: GAVILON GRAIN, LLC OMAHA, NE

STATEMENT OF THE CASE

This case involves Turner Grain Merchandising, Inc. (Turner Grain), which was placed into involuntary receivership in September 2014. Turner Grain then filed for bankruptcy under Chapter 11 in October 2014, which was converted to a Chapter 7 bankruptcy filing in May 2015. M. Randy Rice (Rice) was appointed the Chapter 7 bankruptcy trustee for Turner Grain in May 2016. Rice then filed an arbitration case against Gavilon Grain, LLC (Gavilon) in January 2018. In this arbitration case, Rice seeks to recover funds from Gavilon under three main claims:

1. Unpaid shipments of corn in the amount of \$3,652,183.94
2. Unpaid shipping charges in the amount of \$3,070,138.80
3. Improper cancellation of contracts in the amount of \$1,441,600.00

Rice states Turner Grain had operated as a grain broker with Gavilon as its largest and primary trading partner. The parties traded corn and soybeans with each other for a number of years previous to the circumstances underlying this dispute. Neither party disputed the validity of any of the contracts or pricings that were submitted in this case.

The arbitrators determined that the following sequence of events was pertinent to this case:

- August 13, 2014 – Gavilon sent to Turner Grain by email a report of the contracts Gavilon considered open between the parties.
- August 13, 2014 – According to a detailed reconciliation report prepared by Gavilon, August 13 was the last ticket date recorded. (The report was prepared by Gavilon after Turner Grain filed for bankruptcy).
- August 25, 2014 – Gavilon cancelled ten contracts it had with Turner Grain that Gavilon considered outstanding (Ps6052179, Ps6050462, Pc6050938, Pc6049450, Pc6052459, Pc6052178, Pc6052177, Pc6049449, Pc6052185, and Pc6051751).
- September 11, 2014 – Turner Grain was placed into involuntary receivership.
- October 23, 2014 – Turner Grain filed for Chapter 11 bankruptcy.

- October 24, 2014 – Gavilon prepared the detailed reconciliation report that itemized the grain contracts under which Turner Grain had delivered.
- May 15, 2015 – Turner Grain’s case was converted to a Chapter 7 bankruptcy.
- May 2016 – Rice was appointed as Trustee.
- October 21, 2016 – Rice filed a lawsuit against Gavilon in bankruptcy court in Little Rock, AR.
- August 22, 2017 – the bankruptcy court stayed the lawsuit and ordered it to NGFA Arbitration.
- September 21, 2017 – Rice filed for arbitration with NGFA against Gavilon.

Rice presented numerous claims against Gavilon in the arbitration complaint. Rice claims the severe financial distress, which Turner Grain faced, was caused by its extensive and ongoing trading relationship with Gavilon.

With respect to the claims for unpaid shipments of corn from the summer of 2014, Rice argues the reconciliation reports prepared by Gavilon are inaccurate, incomplete and self-serving. Rice claims Turner Grain made deliveries after August 13, 2014 (the last recorded date on Gavilon’s reconciliations). Rice also argues Gavilon knowingly failed to report hundreds of transactions in the reconciliation reports. According to Rice, Turner Grain has documentation for approximately 350 loads, which were not included in Gavilon’s reconciliation reports nor paid for by Gavilon. Rice also argues Turner Grain was owed money for loads “Applied in Error.”

With respect to the claims for unpaid shipping charges, Rice states that pursuant to the terms of the contracts, Gavilon could designate alternative delivery locations, but if the change was solely for Gavilon’s own benefit and convenience, Gavilon owed Turner Grain the increased shipping costs. In prior dealings between the parties when Gavilon would designate alternative delivery locations, Turner Grain would invoice Gavilon for the additional shipping charges and Gavilon would pay them. Rice claims that during Turner Grain’s financial distress, it did not issue invoices but it did make good faith attempts to collect the outstanding amounts from Gavilon to which Gavilon responded it would need to stop all payments for an undertermined period to calculate the outstanding amounts owed. Rice states Turner Grain relied on payments from Gavilon to stay in business so Turner Grain could not risk Gavilon ceasing payments to calculate the outstanding amounts for additional shipping charges.

With respect to the claims for improper contract cancellations, Rice states Gavilon stopped doing business with Turner Grain in late August 2014, which was two weeks before Turner Grain was forced into involuntary receivership. Rice claims Gavilon cancelled the contracts because they were priced much higher than spot market prices. According to Rice, Gavilon stated it cancelled the contracts due to Turner Grain’s failure to deliver the grain within the specified timeframe. Rice argues six of the ten contracts cancelled had delivery periods that had not passed. Rice further argues the other four contracts were breached by Gavilon, not Turner Grain. Rice also claims Turner Grain purchased grain from farmers to fulfill its contractual obligations with Gavilon, but Gavilon would not accept the shipments. Rice further argues Gavilon did not follow NGFA Grain Trade Rule 28(B)(2) as it sold out the contracts for its own benefit rather than applying due diligence. According to Rice, under NGFA Grain Trade Rule 28(C), Gavilon could only cancel four of the ten contracts as six contracts still had an open delivery period. Rice claims cancellation of the contracts resulted in a net gain for Gavilon since spot market prices were lower, and Gavilon consequently owed Turner Grain the resulting difference in price.

Gavilon denies each of Rice’s claims and asserts that Rice has provided no proof to support its claims. Instead, according to Gavilon, Rice has falsely reconstructed and mischaracterized an analysis of Gavilon’s grain purchases from Turner Grain. Gavilon claims it informed Turner Grain it could not pay

for additional shipping charges due to changes in destination without proper documentation, which Turner Grain never provided. Gavilon also argues it had the right under the contracts to cancel these agreements should Turner Grain become insolvent or breach or fail to perform on any of the contracts. In its written submissions in this matter, Gavilon provided extensive and detailed arguments asserting that Rice failed to meet its burden of proof in this case.

THE DECISION

It is noted that Rice claims he was severely limited in his ability to prove his case because he did not have access to records, and that Rice's case was largely based upon records provided by Gavilon.

With respect to claims that Turner Grain's financial distress was the result of its ongoing business relationship with Gavilon, the arbitrators disagree. Turner Grain's dire financial situation and eventual bankruptcy was due to poor accounting and contract management, shoddy recordkeeping and lack of financial reporting and controls. To place the blame upon Gavilon for Turner Grain's poor financial condition is without merit. If Turner Grain perceived it was disadvantaged by its business relationship with Gavilon, it could have chosen to do business with other grain firms.

With respect to how the parties' positions were presented in this case, both Rice and Gavilon were neglectful in how they provided documentation to support their arguments. A vast amount of documents were simply *dumped* by the parties in their presentation of this case. Due to the volume and format in which these documents were produced, it was difficult and burdensome to assess and follow how these materials related to the issues presented in this case. For example, it was necessary for this arbitration committee to painstakingly review thousands of scale tickets in an effort to match them through multiple exhibits produced related to the contracts between the parties, and continuously missing was documentation on at least one component needed to demonstrate how the process occurred from contracting through settlement.

This arbitration committee concludes as follows with respect to the three main claims for damages:

Unpaid corn shipments

Rice argues the last delivery date for which Gavilon paid Turner Grain was August 13, 2014, and "numerous shipments continued to be made from Turner Grain's (farmer) customers to Gavilon's customers from and after this date." Although Rice provided scale tickets in support of his claim, there was no supporting documentation to show the loads were applied to Gavilon's contracts other than one truckload that referenced both Gavilon and Turner Grain. This one truckload was paid for by Gavilon and included on the reconciliation report. Further, the scale tickets from destination that Rice provided only referenced Gavilon and there could be situations where Turner Grain delivered grain for the account of another party that had the grain sold to Gavilon as well as bought from Turner Grain ("string trade"). Therefore, this claim is not supported by the evidence presented in this case.

There were loads that Gavilon paid to Turner Grain and then reversed payment when it was discovered that Gavilon should have paid another vendor. The note in a reconciliation report – "Paid to Turner in error" does not indicate that Turner Grain was not getting paid; rather, it would indicate Turner Grain had been paid in error for grain that was not Turner Grain's. This practice of reversing a previous payment for this reason is not unusual. The payment reversals assessed by Gavilon presented in this case for grain paid to Turner Grain in error do not present an issue because Gavilon documented the tickets being reversed. Plus, the committee noted there were several instances where Gavilon advanced funds to Turner Grain as a prepayment against contracted grain to be delivered which Rice does not seem to take into account. However, charges assessed against Turner Grain with the notation "Paid to

Turner in error” with no supporting documentation provided to show a reason why it was paid in error are disallowed and not deducted from any amounts due to Turner Grain (See attached Addendum – Section B).

The detailed reconciliation report identified the contracts with open balances. The documentation related to the contracts indicates the original contracted bushels and the number of bushels settled from the reconciliation report. The underfill of the contracts, with no documentation provided in this case to show the contracts were cancelled, indicates the contracts would still have been open as of August 25, 2014. Gavilon failed to follow the NGFA Grain Trade Rules when settling these contracts in fulfillment of its obligations, and Gavilon failed to supply documentation for pricing and cancelling contract balances. Therefore, this committee considers all contracts with balances as still open and to calculate gain or loss on the open contracts, this committee has assigned to those bushels a value as of August 26, 2014, applicable to the respective delivery location. These contracts and the related calculations are detailed in Section C of the addendum attached to this decision.

Unpaid shipping charges

Each of the contracts between Turner Grain and Gavilon contain the following provision (or a virtually identical provision, which is indistinguishable for all relevant purposes):

Buyer has the right to designate any reasonable alternate delivery point if necessary to expedite or facilitate Seller’s performance of this Contract but shall have no obligation to do so. Increased shipping charges under this provision shall be for Seller’s account and reductions in shipping charges for Buyer’s account; provided, however, that if the designated alternate delivery points are solely for Buyer’s convenience, increased shipping charges shall be for Buyer’s account.

Both Rice and Gavilon agreed the past business practice between Turner Grain and Gavilon when Gavilon requested an alternative delivery location for its convenience was that Turner Grain documented and invoiced Gavilon for the additional freight, and then Gavilon paid the invoice as it was responsible for the additional freight pursuant to the contract terms.

Rice submitted documentation in this case of emails between the parties discussing an alternative delivery location as evidence that Gavilon switched the location and owed freight charges. However, an email from Gavilon requesting a location change does not prove that Turner Grain ultimately in fact switched delivery locations nor does it address the freight differences between locations. With respect to the unpaid shipping charges claimed in this case, Turner Grain failed to perform the necessary invoicing to Gavilon for any quantities diverted and additional freight incurred. Therefore, Rice’s claims for unpaid shipping charges are unsupported and denied.

Improper cancellation of contracts

With reference to NGFA Grain Trade Rule 3(B) [Confirmation of Contracts], since there was no evidence presented in this case of Turner Grain issuing contract confirmations, the contracts initially issued by Gavilon were binding upon both parties.

The Terms and Conditions stated on the back of the contracts stated “(a) a reasonable belief by Buyer that Seller is insolvent (Buyer’s termination pursuant to this provision is valid if Buyer holds a reasonable belief regardless of whether that belief turns out to be correct).” However, in Gavilon’s letter of August 25, 2014, Gavilon stated its reason for cancelling ten of the contracts between the parties was “failure to deliver the grain within the specified time frame indicated on the Purchase Contracts.” These ten contracts are as follows:

Contract #	Commodity	Delivery Period
6052179	Soybeans	Oct/Nov 14
6050462	Soybeans	Oct/Nov 14
6050938	Corn	Apr/May 14
6049450	Corn	Jul 14
6052459	Corn	Jul 14
6052178	Corn	Jan/Feb/Mar 15
6052177	Corn	Oct/Nov/Dec 14
6049449	Corn	Jun 14
6052185	Corn	Dec 14
6051751	Corn	Aug 14

With respect to the two soybeans contracts, the parties provided no documentation or other information upon which the arbitrators could determine whether these were in dispute or any gain or loss occurred. Six of the ten contracts were for future delivery, and when Gavilon cancelled the ten contracts on August 25, 2014, it provided no documentation as to the valuation it used to calculate gain or loss. Rice stated he established a value for the contract wash using data from the *USDA Market News* website, however Rice provided no documentation of basis, underlying futures price or freight basing point to support the \$3.81 value. This arbitration committee relied upon the *USDA Market News* to determine basis values in its calculation of damages on the cancelled contracts in accordance with Grain Trade Rule 28. The *USDA Market News* listed the basis for Pine Bluff on August 26, 2014, at -\$0.23 CU14 and CU14 closed at \$3.56 on August 26, 2014. Thus, the arbitrators calculated a \$3.33 spot market price for Pine Bluff on August 26, 2014.

Information on freight spreads were not provided by either party. The committee used the following spreads based upon comments included in various Gavilon Purchase Contracts that provided detailed freight spreads between different delivery locations:

Pine Bluff, Dewitt & Dumas @ -\$0.23 CU14
 Brinkley & Newark @ -\$0.48 CU14
 Danville, Sprada, Hope, Pottsville & Mer Rouge @ -\$0.03 CU14

Based upon these findings and calculations, Rice is owed \$5,938,180.21 and Gavilon is owed \$352,700.00. Therefore, the total amount due to Rice is \$5,585,480.21. (See attached addendum for further detail on these calculations).

THE AWARD

The arbitrators award \$5,585,480.21 to M. Randy Rice, Chapter 7 Trustee for Turner Grain Merchandising Inc., from Gavilon Grain, LLC.

Decided: March 20, 2020

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

Lynn Krueger, Chair Senior Manager U.S. Purchasing, Commodities Ingredion Incorporated Westchester, IL	Jay Mathews Grain Marketing Manager Midwest Grain LLC Bloomington, IL	Dean O'Harris Trader and Business Development Great Lakes Grain & Transportation LLC Buckeye, AZ
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NGFA Arbitration Case No. 2823 Addendum

Section A - Grain Payables

Gavilon Contract Number	Contract Price Listed	Freight Basing Point	Bushels Settled	Net Amount Due (Gavilon) Turner	Notes:
32399	5.7500	DVLD Pine Bluff AR	149,450.71	37,714.88	
6051750-01	4.8700	FOB Brinkley, AR	59,153.93	124,298.04	
6052468	5.1750	FOB Dumas, AR	9,706.06	-	Contract stated FOB Dumas, TX
32400-01	5.9500	DLVD Danville, AR	200,000.00	5,556.88	
6051733-01	5.5125	DLVD Danville, AR	348,973.53	(864,038.94)	
6051733-02	4.9425	DLVD Danville, AR	98,715.22	171,616.99	
6051733-03	5.5250	DLVD Danville, AR	149,910.05	(516.57)	
6051733-04	5.1250	DLVD Danville, AR	-	-	Contract Cancelled
32432-01	5.8600	DLVD Hope/Emmett	348,100.71	79,843.74	
52437	5.6500	DLVD Danville, AR	2,931.61	16,563.59	
6043468	6.9500	FOB Brinkley, AR	1,075.36	-	
6044473	4.7950	DLVD Pottsville	927.31	-	
6044986	4.7975	DLVD Pottsville	1,865.36	4,307.48	
6045684	4.7250	DLVD Pottsville	972.50	-	
6045697	4.7050	DLVD Pottsville	1,913.93	4,797.41	
6047705	6.3600	FOB Brinkley, AR	1,137.86	-	
6048188	4.8425	FOB Dumas, AR	2,994.68	10,751.49	
6048193	5.1750	DLVD Bergman, AR	960.71	-	
6048651	4.9150	FOB Dumas, AR	3,573.56	19,636.71	
6049094	4.4725	DLVD Dexter, MO	1,027.50	-	
6049444	4.8300	FOB Mer Rouge	19,998.93	20,250.12	
6049446	5.1100	DLVD Arcadia, LA	96,128.24	-	
6049447	5.8100	DLVD Arcadia, LA	150,000.00	(335,369.61)	
6049448	5.8100	DLVD Arcadia, LA	150,000.00	-	
6049449	4.2750	FOB Mer Rouge	-	-	Contract Cancelled
6049450	4.2750	FOB Mer Rouge	-	-	Contract Cancelled
6050675	4.3975	FOB Dumas PB GO	1,051.43	-	
6051371	4.6500	DLVD Newark, AR	13,961.08	(682.57)	
6051389	5.5000	DLVD Bergman, AR	963.93	-	
6051751	4.8625	FOB Brinkley, AR	149,258.71	691,290.35	
6052074	5.0575	FOB Brinkley, AR	50,000.00	-	
6052437	5.6500	DVLD Danville, AR	913.57	-	
6052447	5.7200	DLVD Hope, AR	25,287.15	-	
6052453	5.6475	DLVD Pottsville	983.93	-	
6052454	5.6400	DLVD Danville, AR	3,791.78	-	
6052455-01	5.7875	DLVD Hope, AR	48,064.31	-	
6052455-02	5.9350	DLVD Hope, AR	50,307.14	-	
6052456-01	5.6025	DLVD Pottsville	20,266.43	5,158.28	
6052458-01	5.2550	FOB Dewitt, AR	99,392.71	56,767.66	
6052472-01	5.5625	DLVD Danville, AR	1,005.36	-	
6052472-02	5.5625	DLVD Danville, AR	8,838.92	-	
6052797-01	5.7850	DLVD Danville/SP	6,538.56	-	
6052797-02	5.7850	DLVD Danville/SP	32,502.85	-	
6052798-01	5.9350	DLVD Hope, AR	76,263.05	-	
6052804-01	5.8800	DLVD Hope	60,082.91	-	
6052807-01	5.2500	DLVD Newark, AR	30,000.00	3,810.98	
6051740-01	0.0000	DLVD Danville, AR	-	-	Contract Cancelled
6051740-02	5.0850	DLVD Danville, AR	3,878.21	-	
6051740-03	5.0850	DLVD Danville, AR	119,270.74	4,561.19	
6051740-03	5.0850	DLVD Danville, AR	-	57,788.39	
6051740-04	5.6750	DLVD Danville, AR	50,000.00	2,010.48	
6051740-05	5.7300	DVLD Danville, AR	50,000.00	-	
6051740-06	5.7600	DLVD Danville, AR	50,000.00	-	
6051740-07	5.0850	DVLD Danville, AR	-	-	Contract Cancelled
6047212-01	6.6700	FOB Mer Rouge, LA	2,977.13	-	
6048186	5.1000	FOB Mer Rouge	1,024.64	-	
6048646	5.5750	DLVD Bergman, AR	895.36	-	
6048647	5.7200	DLVD Bergman, AR	1,019.64	-	
6050078	4.5100	FOB Brinkley, AR	1,042.86	-	
6052471-01	5.3700	DLVD Mer Rouge, LA	27,092.62	-	
6052471-02	5.6700	DLVD Mer Rouge, LA	-	-	Contract Cancelled
6052471-03	5.6700	DLVD Mer Rouge, LA	72,253.11	24,480.02	
6050938-01	3.9750	FOB Brinkley, AR	14,176.24	64,356.90	
6050938-02	3.975	FOB Brinkley, AR	24,859.23	115,749.34	Gavilon documents this contract as 250,000 bu.
6050938-03	5.175	FOB Brinkley, AR	40,000.00	-	
6050938-04	5.8450	FOB Brinkley, AR	155,000.00	-	
6050938-05	5.3775	FOB Brinkley, AR	40,000.00	-	
6050938-06	5.8450	FOB Brinkley, AR	179.26	1,047.77	Actual bushels settled on all 6050938 as 274,214.73 bushels where contract was for 500,000.00 bushels
6052186-01	5.4100	DLVD Danville-S	2,935.00	15,878.35	
6051697	5.1900	DLVD Waldron,KS	(6,425.01)	(33,345.75)	
			3,129,170.61	\$ 304,283.60	Total Due Turner

Section B - Gavilon's claim for money owed for 'Paid to Turner in Error' - disallowed for no documentation

Paid to Turner in Error	84,111.72	No documentation provided on why Gavilon charged this back to Turner.
Paid to Turner in Error	104,462.49	No documentation provided on why Gavilon charged this back to Turner.
Paid to Turner in Error	98,993.65	Gavilon lists several amounts that equal the total, but no documentation provided. Charges to Turner were made in Jan. and Mar. 2014 - sufficient time for Gavilon to handle previously
Paid to Turner in Error	4,953.42	No documentation provided on why Gavilon charged this back to Turner.
	57,788.39	Contract 6051740-03 - Gavilon reconciliation report shows this amount as paid, but does not list date paid or check number as references in other settlements

