



National Grain and Feed Association Arbitration Decision

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December 2, 2020

CASE NUMBER 2832

**PLAINTIFF: CITIZENS L.L.C.
CHARLOTTE, MI**

**DEFENDANT: SOY INVESTORS, LLC, DBA HARVEST INNOVATIONS
INDIANOLA, IA**

STATEMENT OF THE CASE

This case concerned two contracts between the seller, Citizens L.L.C. (“Citizens”), and the buyer, Soy Investors, LLC, dba Harvest Innovations (“Soy Investors”), for U.S #1 non-GMO soybeans.

Sales contract confirmation number 40516 was created on April 15, 2016, between Citizens and Soy Investors for 28,000 bushels of U.S #1 non-GMO soybeans “FOB Charlotte Michigan” at \$4.00 per bushel + CME Jan17 Soybean Futures. The delivery period under this contract was “Harvest 2016” through September 2017. This contract was priced on Dec. 20, 2016, using the Jan17 futures value of US\$10.12-per bushel and establishing a contract price of \$14.12 per bushel.

Sales contract confirmation number 12216 was created on January 22, 2016, between the parties for 50,000 bushels of U.S #1 non-GMO soybeans “Delivered Deshler Ohio” at \$4.00 per bushel + CME Jan17 Soybean Futures. The delivery period under this contract was “Harvest 2016” through October 2017. This contract was also priced on Dec. 20, 2016, using the Jan17 futures value of US\$10.12 per bushel and establishing a contract price of \$14.12 per bushel.

Citizens states contracts 40516 and 12216 were two separate contracts, which were created on different dates, for different quantities, and with different delivery terms and periods. Citizens claims that Soy Investors breached contract 40516 for 28,000 bushels because it failed to arrange for shipping or provide any shipping plan to pick up the contracted bushels FOB Charlotte, Michigan prior to expiry of the contract delivery period on September 30, 2017. Citizens states it contacted Soy Investors several times over the summer of 2017 to inquire about Soy Investors taking delivery under contract 40516, but it failed to provide any instructions. Citizens then proceeded to sell-out the 28,000 bushels from contract 40516 from September 29, 2017 through November 2, 2017. Citizens claims as damages in this case \$114,144.80 for fair market cancellation of the contract plus arbitration service fees, attorney fees and interest.

Soy Investors’ position is that the agreement between the parties was for a total of 78,000 bushels over the two contracts (40516 and 12216). Soy Investors claims it took delivery of 34,026.01 bushels before August 30, 2017, and, therefore, fully satisfied its obligations to purchase 28,000 bushels under contract 40516 prior to the end of September 2017. Soy Investors also argues that after terminating contract 40516, Citizens liquidated the soybeans it had been storing at steep discounts relative to their market value.

The arbitrators noted in particular the following communications between the parties:

On September 26, 2017, Citizens sent an email to Soy Investors summarizing the balances for the two contracts: contract 12216 has a balance of 15,973.99 bushels with the shipping period ending October 2017, and contract 40516 has a balance of 28,000 bushels with the shipping period ending September 2017. In this email, Citizens also requested that Soy Investors advise of its plan for taking delivery of the 28,000 bushels under contract 40516 before the end of September.

On September 29, 2017, Citizens sent an email to Soy Investors stating that the shipping period on contract 40516 had expired and that Citizens had exercised its right to cancel the contract and sell out the inventory for Soy Investors' account. The cost to liquidate was calculated by Citizens as 28,000 bushels at \$3.85 per bushel for a total of \$107,800.

On October 2, 2017, Soy Investors sent an email to Citizens stating that its records indicated it already pulled the soybeans for contract 40516 and requesting that the parties set up a conference call.

On October 3, 2017, Citizens responded by email proposing a conference call for the upcoming Thursday, October 5.

On October 5, 2017, Soy Investors sent an email to Citizens, which indicated that the parties had been unable to connect on the scheduled conference call. Also, in this email, Soy Investors provided Citizens with a revised purchase release to pull the 28,000 bushels under contract 40516 beginning October 12, 2017.

On October 5, 2017, Citizens replied to Soy Investors stating contract 40516 had been cancelled, and contract 12216 remained with a balance of 15,973 bushels with the shipping period to end October 31, 2017. In this email, Citizens also requested that Soy Investors revise the release numbers on its purchase order to reflect the correct bushels.

THE DECISION

The arbitrators conclude that contract 40516 and contract 12216 were in fact two separate contracts. The arbitrators noted contract 12216 was created on January 22, 2016, with a delivery location of "Delivered Dresher, OH" and a shipping period of Harvest 2016 through October 2017. Contract 40516, on the other hand, was created on April 15, 2016, with a delivery location of "FOB Charlotte, MI" and a shipping period of Harvest 2016 through September 2017. The arbitrators also conclude that Soy Investors failed to provide adequate shipping plans to move the 28,000 bushels under contract 40516 prior to the end of the designated September 2017 shipping period, and, therefore, Soy Investors was in breach of the contract.

However, the arbitrators further conclude that Citizens failed to exercise due diligence in the course of establishing fair market value when selling-out the undelivered contract balance of 28,000 bushels over the month of October 2017. On October 5, 2017, Soy Investors provided a purchase order with release numbers commencing on October 12, 2017 to take the 28,000 bushels under contract 40516 at contract value, which establishes the basis premium of +\$4.00 per bushel as fair market value for the balance that was remaining to sell-out beginning on October 12. Therefore, the arbitrators decided that Citizens had the option to minimize the loss on remaining bushels as of October 12 by selling to Soy Investors at contract value. As of October 12, Citizens had sold-out 15,030 bushels, leaving 12,970 bushels that could have been sold at contract value. The arbitrators decided to award to Citizens \$3.74 per bushel only on the 15,030 bushels sold prior to October 12, 2017.

THE AWARD

The arbitrators award \$56,212.12 to Citizens LLC from Soy Investors, LLC, dba Harvest Innovations.

Decided: July 18, 2019

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

Joe Bourne, *Chair*

Trader
CSC Gold
Overland Park, KS

Robert Bond

Senior Grain Merchandiser
Agrex, Inc
Franklin, TN

Shayne Murphy

Grain Merchandiser
Parrish & Heimbecker Limited
Winnipeg, Manitoba, Canada



December 2, 2020

APPEAL CASE NUMBER 2832

APPELLANT/PLAINTIFF: CITIZENS, L.L.C.

APPELLANT/DEFENDANT: SOY INVESTORS LLC, DBA HARVEST INNOVATIONS

DECISION OF THE APPEALS COMMITTEE

Both the plaintiff, Citizens, LLC (“Citizens”, and the defendant, Soy Investors LLC, DBA Harvest Innovation (“Soy Investors”), filed separate appeals of the original arbitration committee’s decision. After review of the facts, arguments and documents of the case, the appeals committee reached the following conclusions:

As stated by the original arbitration committee, there were two separate grain purchase contracts entered into between the seller, Citizens, and the buyer, Soy Investors, for US#1 non-GMO Soybeans. As the original arbitration committee noted, Citizens Sales Contract Confirmation 12216 refers to the following specific contract terms:

“Title/Risk of Loss and/or Damage/Freight: Delivered Deschler OHIO”

However, Citizens Sales Contract Confirmation 40516 reads:

“Title/Risk of Loss and/or Damage/Freight: FOB Charlotte Michigan”

The appeals committee noted 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 will be binding upon both parties, unless the confirming party has been notified by the non-confirming party as described in Rule 3(A) of any disagreement with the confirmation received.”

In this case, no documentation was provided that Soy Investors issued confirmations of its own for either contract or stated objections to the terms of the contract confirmations issued by Citizens. Therefore, the appeals committee determined that the confirmations issued by Citizens governed the trades.

The appeals committee agreed that this difference in freight basing points between the two contracts did not provide for loads delivered to Deshler, Ohio to apply interchangeably with loads FOB Charlotte, Michigan. As such, loads delivered by Citizens to Deshler, Ohio could only apply against Contract

12216. Soy Investors was responsible to arrange transportation to pick up the soybeans FOB Charlotte, Michigan on Contract 40516. Soy Investors provided notice to Citizens, “Start to deliver 13 loads..., Deliver 8 loads..., etc. (against Soy Investors purchase order 66537)”. There was no notation on the purchase order that some of the loads would be picked up by Soy Investors, as was its responsibility under the terms of Contract 40516. This indicated to the appeals committee these loads should be applied against Contract 12216.

The parties reported there were discussions between themselves over the summer of 2017 concerning delivery of the soybeans; however, no documentation of those conversations was provided to the arbitrators. On September 29, 2017, Citizens served notice upon Soy Investors that Citizens was exercising its right to cancel Contract 40516 under NGFA Grain Trade Rule 28(B) [Buyer’s Non-Performance], which provides that upon receiving notice of the Buyer’s non-performance on a contract, the Seller shall elect from either of three options, including to “(3)cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.” The appeals committee determined Citizens erred in the method upon which it cancelled the defaulted portion of the contract because it cancelled the contract on September 29, 2017 – not the next business day – which would have been October 2, 2017.

Citizens made extensive arguments that the premium it received for Contracts 40516 and 12216 was associated with “*the unique way Citizens sorted the food-grade soybeans through its fanning mill, color sorter, de-stoner and belt separator.*” However, Citizens did not provide any independent source of what #1 non-GMO Food Grade Soybeans were worth on either September 29 or October 2, 2017. The market value for a commodity with these traits is extremely thin and lacks transparency. Soy Investors sent an email to Citizens on October 5, 2017, indicating that it would take all the unshipped contracted bushels starting October 12, 2017, at the agreed-upon contracted price. The appeals committee determined that this statement by Soy Investors to honor the price of the earlier commitments was the conclusive and only written determinant of fair market value at issue in this case.

Citizens argued it should not be required to enter into a contract with a counterparty that it held in default. However, the appeals committee determined the original Contract 40516 was cancelled and the parties were free to negotiate delivery terms for Contract 12216 that were acceptable to both Citizens and Soy Investors. Since Citizens did not finish shipment of the beans in default until November 2, 2017, and Soy Investors stated it would complete shipment of the beans in October 2017, the parties could likely have reached an agreement if they were truly willing to do so. The parties’ obligations in this respect are borne out in NGFA Grain Trade Rule 28 (C), which provides: “*Failure to perform any of the terms and conditions of a contract shall be grounds only for the refusal of such shipment or shipments, and not for rescision of the entire contract or any other contract between the Buyer and the Seller.*”

As is custom of the trade, and affirmed in previous NGFA Arbitration decisions, the parties to a default must act with due diligence to mitigate damages. Soy Investors stated it would pay Citizens the previously agreed upon price of \$14.12 per bushel and would take the entire unshipped quantity in October 2017. Citizens subsequent selling of the US#1 non-GMO Food Grade Soybeans at a lesser value did not demonstrate Citizens acted to mitigate damages.

AWARD

Therefore, the appeals committee modified the original arbitration committee's decision and overturns the award of damages to Citizens LLC from Soy Investors LLC, dba Harvest Innovations.

Decided: June 18, 2020

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

Sharon Clark, *Chair*
Sr. VP, Transportation &
Regulatory Affairs
Perdue AgriBusiness LLC
Salisbury, MD

Chuck Elsea
Chief Strategy Officer
The Redwood Group
Mission, KS

Dennis Inman
Vice President Grain
Central Farm Service
Truman, MN

Jay Mathews
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