



March 4, 2022

CASE NUMBER 2863

**PLAINTIFF: M. RANDY RICE, TRUSTEE FOR TURNER GRAIN
MERCHANDISING, INC.
LITTLE ROCK, AR**

**DEFENDANT: BRUCE OAKLEY, INC. AND OAKLEY GRAIN, INC.
N. LITTLE ROCK, AR**

STATEMENT OF THE CASE

Turner Grain Merchandising, Inc. (“Turner”) purchased grain from a variety of sources. For purposes of this dispute, Turner sold grain to Bruce Oakley, Inc. and Oakley Grain, Inc. (collectively, “Oakley”), that it delivered directly to Oakley’s customers.

Turner was less than precise about tracking deliveries and remittances. From time to time, Oakley contacted Turner to point out that Oakley’s customers had paid for loads for which Turner had not billed Oakley.

On August 19, 2014, Oakley filed an “interpleader” complaint in federal court – asking for authority to deposit a sum of money Oakley claimed it owed to Turner for yellow corn that Turner supplied to Oakley and its customers on and before August 12, 2014 – and asking the court to determine what monies were owed to whom.

On September 11, 2014, Turner was placed into involuntary receivership.

On October 23, 2014, Turner filed a voluntary Chapter 11 reorganization petition in bankruptcy court. The courts moved the interpleader action and funds to the bankruptcy court.

On May 15, 2015, the bankruptcy court converted the Chapter 11 reorganization into a Chapter 7 liquidation and appointed M. Randy Rice to be the Chapter 7 Bankruptcy Trustee (“Trustee”) to protect the bankruptcy estate.

On May 16, 2016, the Trustee concluded that Oakley had not paid Turner for all of the grain Turner delivered to Oakley’s customers. When the parties could not resolve their differences in the bankruptcy proceeding, the bankruptcy court referred the matter to the NGFA for arbitration.

In the course of this arbitration proceeding, the parties submitted their acrimony, arguments and 400 unnumbered, untabbed pages of tables and exhibits and asked the arbitrators to figure out what had happened and who owed what to whom.

Oakley objected to the timeliness of the claims asserted against it in the bankruptcy proceedings by Rice. Although the arbitrators are sympathetic to Oakley's frustration with the delays, the matter is properly before NGFA. This matter came to NGFA by way of a court order that directed the parties to arbitrate their claims in accordance with NGFA Arbitration Rule 1(A)(2), and this matter was timely filed within thirty days of the court order pursuant to NGFA Arbitration Rule 1(E).

THE DECISION

Count I: Unpaid Loads

Oakley contracted for, and Turner supplied, yellow corn to be delivered to Oakley's customers. The Trustee contended that Oakley paid Turner for some, but not all, of the loads.

Proof of Delivery of Unpaid Loads

The Trustee claimed that Oakley had not paid for 32,093.40 bushels of corn. The Trustee's Exhibit referred to 32,078.71 bushels of corn. The parties resolved their dispute as to 11,397.80 bushels over the course of the arbitration.

Oakley disavowed knowledge of Turner's deliveries of some of the disputed bushels, pointing out that according to its records, Oakley had fulfilled these obligations from its own inventory, rather than relying on shipments from Turner. The Trustee maintained that although Turner made the deliveries, it acknowledged that for 4,012.15 of those disavowed bushels it had no contract confirmation or delivery tickets to suggest that a delivery had been made. The arbitrators disallow the Trustee's claim for those bushels.

For the remaining 16,668.76 disputed bushels, the Trustee supported its claims with Oakley's contract confirmations, destination scale tickets and Oakley's allegations in its interpleader action. The arbitrators find that these bushels were delivered.

Payment

The Trustee asserted that Turner was not paid for the 16,668.76 delivered bushels. Oakley does not suggest that it paid Turner.¹ The arbitrators find that Oakley owes the bankruptcy estate \$75,277.44 for the 16,668.76 bushels of yellow corn Turner caused to be delivered to Oakley's customers at a variety of prices.²

Unpriced Grain

The parties agreed that – in addition to the transactions in Count I of the complaint – from April 2 through August 12, 2014, Turner caused corn to be delivered to Oakley destinations. The Trustee

¹Several of Oakley's exhibits contain the handwritten notation that Oakley paid someone else for the grain. In its rebuttal argument, Oakley claimed that it paid the entity that actually supplied the grain. Although there may be circumstances in which it would be appropriate for a Buyer to pay someone other than its contractual counterparty, neither party explained why that should happen in this case.

² The parties argued about the appropriate price to use on overfill bushels. Because the Trustee withdrew or the arbitrators disallowed claims for the alleged overfill bushels, there is no need to discuss whether and how Grain Trade Rule 23(A) applies to this case.

observed that, when asking to pay money into the court interpleader proceeding, Oakley priced the grain as of September 26, using December futures. The Trustee, referring to NGFA Grain Trade Rule 9, asked the arbitrators to price the grain as of no later than the last delivery date to each of Oakley's customers.

Oakley countered that because it sent contract confirmations and Turner did not, absent a timely objection from Turner, Oakley's confirmation controlled. The arbitrators conclude Oakley might be right, except that neither party submitted a confirmation of these contracts.³

Absent any evidence of an agreement as to the price at which the corn was to be sold, the arbitrators fall back on NGFA Grain Trade Rule 9 on "Unpriced Contracts", which states:

All unpriced contracts shall be priced within the trading day's price range at Buyer's option while futures markets are open and tradable. Pricing shall not go beyond the contracted date of shipment, the date of actual shipment, or the day before the first notice day of the contract futures month involved, whichever comes first.

The Trustee presented evidence of the price at which trades were made near the time and place of the deliveries. Oakley did not challenge the Trustee's evidence and has produced no evidence of its own choosing, instead, to stand on its "confirmations." The Arbitrators, therefore, adopt the Trustee's evidence as the conclusive evidence of the trading day's price.

The parties agreed that Turner delivered corn to Oakley destinations. The amount of corn, however, is in question.⁴ Because both parties referred to individual transactions on Trustee's Exhibit E, the arbitrators adopt that document as being the starting point from which to identify deliveries.

Oakley presented a thirty-page table of numbers that purports to tie individual deliveries to the Exhibit R "confirmations" and argues that the terms of the Exhibit R "confirmations" speak for themselves. The arbitrators infer that Oakley has no objection to the Exhibit E list of transactions, but that Oakley is

³ The Trustee submitted "Exhibit R", five documents of unexplained origin, on Oakley letterhead, bearing the date September 26, 2014, purporting to be confirmations of five corn purchases. These documents, however, are not contract confirmations.

The parties agreed that Turner delivered corn to Oakley destinations. The arbitrators are willing to infer that Turner and Oakley had one or more oral agreements as to how much corn Turner would deliver at what price to which Oakley destinations. The arbitrators infer that those agreements were made before the April to August 2014 period during which the deliveries were made. The Exhibit R documents, dated September 26, 2014, do not fit the Grain Trade Rule 3 requirement that a confirmation be sent "not later than the close of the business day following the date of the trade". The two lawyers on the panel note that the documents fail as contract confirmations under the Uniform Commercial Code, too, because they were not sent within a "reasonable time" after the agreement and were not signed ("sufficient against the sender") by Oakley. Finally, although there is no rule prohibiting parties from contracting to buy and sell odd numbers of bushels, the arbitrators think it unlikely that the parties would agree to buy/sell corn in the quantities of 12,095.36, 10,821.07, 6,879.29, 7,437.49, and 27,729.28 bushels, as stated on the respective "confirmations".

⁴Exhibit R, (Oakley's "confirmations") refer to a total of 64,962.49 bushels. Oakley acknowledged, however, that there were additional spot sales. Oakley calculated that there were 728,367 bushels listed in all of the contracts to which the Trustee referred. The Trustee characterizes the number as 97,859.45 bushels in the Complaint (¶¶35-38), but the claims (Complaint ¶¶40, 45, 49, 53, 57 and 61) add up to 96,985.16 bushels. The Trustee goes on to present a table of transactions, "Exhibit E", that reports the total as being 97,101.12 bushels, the number the Trustee adopts in its rebuttal argument.

Because Oakley used Trustee's Exhibit E and because the 97,101.12 bushels shown on that exhibit constitute a plausible combination of Oakley's 64,962.49 "Exhibit R" bushels and an unidentified number of spot bushels, the arbitrators adopt "Exhibit E" as being the starting point from which to make calculations.

using its table of data to demonstrate that it has already paid the “confirmation” price for all the grain it received.

The arbitrators find that Oakley is liable to the bankruptcy estate in the amount of \$41,635.34 for underpricing approximately 97,101.12 bushels of yellow corn.

THE AWARD

With respect to the matters presented for arbitration, Oakley is liable to the Trustee for \$75,277.44 for unpaid corn in Count I and \$41,635.34 for underpriced corn in Count II, for a total of \$116,912.78. The arbitrators leave it to the parties and the Bankruptcy Court to determine how much, if any, of this obligation Oakley already has satisfied by way of money deposited with the Court.

Decided: December 16, 2021

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

Craig Haugaard, *Chair*
Vice President of Grain
Sunrise Cooperative Inc.
Fremont, OH

Simon Buckner
Corporate Counsel
Bartlett Grain Company
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