



NATIONAL GRAIN AND FEED ASSOCIATION

# Arbitration Decisions

October 17, 1978

ARBITRATION CASE NUMBER 1541

Plaintiff: Midwest Grain Company, ("MGC"), Plainview, Texas

Defendant: Rauenhorst, Bellows & Associates ("RBA"), Olivia, Minnesota

The above captioned arbitration case came on for oral hearing in Washington, D.C. on April 20, 1978. The complaint was originally filed in the United States District Court for the Northern District of Texas. The suit was stayed, by mutual consent, pending disposition of the matter by an arbitration panel in accordance with the contract dated July 8, 1976, executed by both parties ("contract").

The case involved failure on the part of RBA to pay commissions on the sale of RBA's sunflower seed in Texas due to alleged non-performance by MGC in accordance with the contract. MGC claimed \$63,354.07 had been due since August 15, 1976, and that to that date, the claim had not been paid. Both parties stipulated as to the dollar amount alleged by MGC should MGC be found not in default of the contract as of August 15, 1976. RBA claimed MGC breached the contract and, as such, denied liability for the commissions. In its answer and counterclaim RBA sought to recover damages in the amount of \$329,181.55 which were alleged to have resulted from MGC's breach.

RBA claimed that MGC breached the contract by: (1) failing to advertise grower agreements; (2) not providing facilities to receive sunflowers at harvest time; (3) not offering "a competitive market price for the crop produced to the farmers who purchase (d)...seed" on at least half the days of each month; and (4) removing the Benson-Quinn-Joseph name from the growers' contract in the early stages of the venture. MGC took the position that it fully performed its obligations under the contract and was due the stipulated commissions.

The Arbitration panel found and concluded the following:

1. Since the contract did not specify the form or extent of advertising to be performed by MGC under the contract, MGC's purchase of several thousand dollars worth of advertising satisfied its advertising requirement.

2. Since the contract did not specify what facility or portion thereof was to be used for receiving purposes, the fact that the contracted sunflowers were received and paid for under the terms of the "growers agreement" was sufficient contract performance. Indeed, the arranged for transfer from MGC as the receiving facility to McNair did not, in light of the limited flowers being taken in, work a hardship on any of the contracting producers or on RBA.

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3. Since the contract offered no definition of what constituted a "competitive price," the determination of whether a competitive price was offered under the circumstances of this contractual dispute required a careful analysis of the facts presented. RBA's witness Herzer of Plainview, a competitive sunflower operator, stated that on "open" market bidding, MGC was competitive, but that their (MGC) contract was not as competitive as his. Further, Herzer testified (P. 215 - transcript) that at harvest, both he and MGC were bidding the same. Herzer further stated (P. 227 - transcript) that MGC was competitive in Plainview and that 70 percent of what he (Herzer) took in during 1976 was under contract. Accordingly, MGC complied with the competitive price requirement by offering at the relevant times involved herein a price on the open market at least as high as its newest and strongest competitor.

4. MGC's financial condition was not a relevant term under the contract.

5. Under the contract RBA, not MGC, had the responsibility to set up receiving stations.

6. Benson-Quinn-Joseph Co. was not a party to the contract and the contract did not require that the Benson-Quinn-Joseph name be used on grower agreements.

7. At the time the contract was executed by the parties, July 8, 1976, most of the facts underlying RBA's claims were known or should have been known by RBA.

8. MGC, notwithstanding the minimal efforts it put forth under the contract, fully performed its contractual obligations so as to be entitled to commissions in the amount stipulated, \$63,354.07.

9. Since MGC was not in breach of the contract at the time RBA became obligated to MGC for the aforementioned commissions, MGC is not liable under RBA's breach of contract counterclaim.

10. Even if MGC had breached its contract with RBA, RBA failed to present credible, substantiating evidence upon which the Arbitration panel could have reasonably determined an award of damages under its counterclaim.

Therefore, after fully considering the complaint, answer and counterclaim, rebuttal and answer, surrebuttal, the oral presentation and its official transcript, the arbitration panel unanimously found in favor of MGC and denied each and every counterclaim asserted by RBA. For the reasons stated, Rauenhurst, Bellows and Associates, Olivia, Minnesota was ordered to pay Midwest Grain Company, Plainview, Texas the sum of \$63,354.07.

Arbitration Committee of the National Grain and Feed Association:

/s/ Henry Fisher, Chairman  
Continental Grain Company, St. Louis, Missouri

/s/ Gabe Anderson  
Sherley Grain Company, Bovina, Texas

/s/ Richard Goldberg  
Goldberg Feed & Grain Company, West Fargo, North Dakota