



National Grain and Feed Association

Arbitration Decision

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April 29, 2004

Arbitration Case Number 2045

Plaintiff: Ag Partners LLC, Albert City, Iowa

Defendant: Fahnländer Farms Inc., Royal, Iowa

Statement of the Case

Plaintiff Ag Partners LLC (Ag Partners) claimed that the defendant, Fahnländer Farms Inc. (Fahnländer), defaulted on a contract for the delivery of 10,000 bushels of corn, and sought damages of \$3,800 arising out of Fahnländer's alleged failure to deliver.

On Dec. 2, 2002, Fahnländer filed an action against Ag Partners in the Iowa District Court for Clay County claiming damages of \$4,800 for alleged breach of contract by Ag Partners. On Jan. 10, 2003, Ag Partners filed an application for arbitration, which the court subsequently granted. Fahnländer then filed a motion to stay arbitration, which the court denied on May 20, 2003. Thereafter, this dispute was submitted to the National Grain and Feed Association (NGFA) for arbitration.

On Dec. 21, 2002, Ag Partners issued purchase contract number 2359 for 10,000 bushels of corn to be delivered between Oct. 1 and Oct. 31, 2002 to Ag Partners' facility at Royal, Iowa. A "ProPricing A+" addendum also was incorporated to the contract, which together with the purchase contract identified the terms under which Fahnländer, as the seller, and Ag Partners, as the buyer, would price the contracted quantity. Both the purchase contract and addendum were signed and dated by Ag Partners on Dec. 21, 2001, and by Fahnländer on Feb. 15, 2002.

The pricing section of the addendum indicated as follows:

"1. Pricing. For grain to be sold by Seller hereunder, Buyer shall pay Seller a price per bushel equal to the Average Futures Reference Price (defined below), plus or minus the Basis to be set by Seller, plus the Average+ Payment (defined below), minus the applicable service fee.

"A. Average Futures Reference Price. For purposes of this Agreement, the Average Futures Reference Price shall be the average of the daily closing prices for December '02 futures from 2-1-02 through 6-30-02 ("Averaging Period").

"B. Basis. Seller shall set the basis by the earlier of 12-21-01¹ or the first date of delivery of any portion of the grain to be sold hereunder.

"C. Average+ Payment. For the purposes of this Agreement, the Average Plus Payment shall be an amount equal to 2/3 of the difference between (1) the average futures selling price (not including any basis adjustment) that Buyer achieves for all grain purchased by Buyer under its ProPricing A+ Agreement ("A+ Grain") through its swap with Cargill during the Pricing Period ("Buyer Price") and (2) the Average Futures Reference Price. The Pricing Period shall be defined as 1-1-02 through 9-30-02. The Buyer Price will be established on or before last day of the Pricing Period. If the Average Futures Reference Price exceeds the Buyer Price, the Average+ Payment shall be zero.

"Buyer shall hedge A+ Grain [sic] the Buyer separately from its other grain purchases."

In addition to the above pricing terms contained in the addendum, the purchase contract stated: "Grain not priced by Seller before Sep 30, 2002 may be priced by Buyer at the opening market on Sep 30, 2002 or pricing deadline may be extended at Buyers option."

¹The arbitrators noted that "12-21-01" in paragraph B was crossed out by Ag Partners upon receipt of the returned signed copies and replaced by "9-27-02."

For the purpose of establishing damages arising from Fahnlander's alleged non-delivery, Ag Partners submitted copies of the bid sheets at Royal, Iowa, for Sept. 30, 2003 and Oct. 31, 2003, as well as a list of six different results for the "Final ProPricing" in December 2002 corn hedging. Ag Partners claimed that because Fahnlander failed to exercise the seller's option to establish a basis by Sept. 30, 2002, the basis was properly established under the contract by the buyer's option using the Sept. 30, 2002, Royal, Iowa, bid basis of 32 cents per bushel under the December 2002 corn futures price. Based upon the list of "Final ProPricing" results submitted, Ag Partners established an A+ December 2002 futures price of \$2.27 per bushel for a purchase contract price of \$1.92 per bushel (after assessment of a 3-cent-per-bushel service fee).

Fahnlander presented several arguments in support of its position that the contract was null, void and unenforceable, including the following:

1. Ag Partners allegedly did not send written confirmation as required by NGFA Grain Trade Rule 3.
2. Ag Partners allegedly changed the agreement without the consent of Fahnlander.
3. Ag Partners allegedly refused to produce documents proving whether it ever hedged or purchased for Fahnlander.
4. Ag Partners allegedly missed its own deadline for entering a contract with Fahnlander.
5. Crucial pricing dates allegedly expired before the contract was agreed upon.
6. The date for setting the basis allegedly passed before it was entered into.

Fahnlander also asserted that, if the arbitrators determined there was a valid enforceable contract, the purchase basis for the contract should be set at +52 cents per bushel over the December 2002 corn futures price of \$2.24. Fahnlander contended that the total contract price of \$2.74 per bushel would result in \$4,900 owed by Ag Partners to Fahnlander.

The Decision

The arbitrators concluded that both parties signed and entered into a binding contract.

Although Ag Partners apparently changed the pricing date without providing notice to Fahnlander, the arbitrators determined there was no economic disadvantage or other harm to Fahnlander as a result of the date change. To the extent that information related to hedging by Ag Partners may not have been provided to Fahnlander, the arbitrators could not find any

terms in either the purchase contract or addendum that required Ag Partners to provide such information.

The arbitrators further determined that evidence to support Fahnlander's claim for the alternative basis was lacking. Therefore, the arbitrators concluded that Ag Partners' actions in addressing non-delivery were in accordance with the terms of the contract, NGFA Trade Rules, and industry standard practices, customs and norms.

The Award

Given the contract terms agreed upon by both parties and the pricing information provided, the arbitrators decided in favor of Ag Partners. However, concerning the 5-cent-per-bushel cancellation fee claimed by Ag Partners, the arbitrators did not find terms in the contract or addendum justifying a cancellation fee.

2002, until payment by Fahnlander. As of Feb. 1, 2004, the total amount due to Ag Partners, including interest, was \$3,465.

Submitted with the unanimous consent and approval of the arbitrators, whose names are listed below:

Therefore, Ag Partner's damages are calculated as follows:

Purchase Price:

A+ December 2002 Corn Futures:	\$2.27
Basis Royal, Iowa, Sept 30, 2002:	-\$0.32 CZ
Cash Price:	\$1.95

Cancellation Price:

Cash Market Royal, Iowa, Oct. 31, 2002:	\$2.25
Service Fee:	\$0.03
10,000 bushels x 33 cents =	\$3,300.00

The arbitrators consequently awarded \$3,300 to Ag Partners. The arbitrators also awarded interest at 4 percent per annum (based upon the New York Prime rate) from Nov. 1,

Joseph M. Guenley, Chair
 Director of Grain Marketing
 Western Milling LLC
 Goshen, Calif.

Michael D. Moser
 President/General Manager
 Mid Oklahoma Cooperative
 Kingfisher, Okla.

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