



National Grain and Feed Association

Arbitration Decision

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June 24, 2004

Arbitration Case Number 2047

Plaintiffs: Brad Hall, et al., Idaho Falls, Idaho

Defendant: Koch Agricultural Co., Boise, Idaho

Statement of the Case

This case involved a margin per-acre agreement for the purchase and sale of wheat between the defendant, Koch Agricultural Co. ("Koch"), and the plaintiffs, Brad and Andrea Hall d/b/a West Desert Farms, and Jerry and Rhonda Elliott d/b/a Elliott Farms (collectively, "the Plaintiffs").

The parties did not dispute that the plaintiffs delivered 100,229 bushels of wheat to Koch for which they had not been paid yet. The dispute between the parties was over whether pricing under the agreement was based upon a fixed-price or a fluctuating futures-exchange price.

The plaintiffs stated that in addition to the delivered 100,229 bushels, they produced 41,566 more bushels and held that quantity for delivery to Koch. The plaintiffs claimed that they

were due \$511,400 for both the delivered and undelivered wheat based upon a fixed-price-per-acre margin of \$250 for the 2,045.60 acres. Further, the plaintiffs sought \$87,806.63 that represented payments from the U.S. Department of Agriculture's Farm Service Agency (FSA), for which the plaintiffs alleged they were entitled, but were not paid, under the contract.

Koch argued that the plaintiffs elected to be paid under the agreement based upon a per-acre amount that was tied to fluctuations in futures markets, and that it was not until the futures markets declined that the plaintiffs sought an alternative payment based upon a fixed price. Koch further disputed any responsibility for the FSA payments to which the plaintiffs claimed they were entitled.

The Decision

The arbitrators determined that the written documents representing the basis of the dealings between the parties were the margin-per-acre agreement dated March 12, 1998, and an Aug. 13, 1998 change order that referred to the margin-per-acre agreement.

The margin-per-acre agreement specifically designated Koch as the buyer and "Brad Hall/Jerry Elliott" as the "Producer." Jerry Elliott signed this contract, and Brad Hall signed the subsequent change order. Questions arose in the arbitration of this case regarding the nature of the relationship between Brad Hall and Jerry Elliott in these transactions, and the fact that one signed the original contract while the other signed the change order. The arbitrators noted that in their initial argument filed in this case, the plaintiffs described the relationship between Hall and Elliott, stating that Elliott was a farmer –

"Elliott does the farming for Hall" on farms that Hall owns and "together Hall and Elliott farm about 10,000 acres; some efficiency of size is realized as a result."

In the arbitration of this claim, Hall and Elliott raised the issue of whether one was the agent for the other. Based upon all of the evidence and documents presented, the arbitrators concluded that it appeared that both Elliott and Hall operated jointly, and that this also was consistent with how they described the general nature of their relationship. Even if only one of them personally signed the original contract, they both proceeded as if they had an agreement with Koch, and then the other signed the change order. Further, parties to a contract are expected to examine carefully the specifications of a document that purports to confirm an agreed trade and, upon finding any material differences, immediately notify the other

party. Under NGFA Grain Trade Rule 3, a written confirmation is deemed binding upon all the parties absent notification of any disagreement.

In this case, the arbitrators determined that the March 12, 1998 agreement applied, given that Hall and Elliott operated jointly by their own statement and appeared to operate jointly in this instance. One signed the original agreement and the other signed the change order, and neither Hall nor Elliott made any effort to state any challenge or disagreement with that contract in writing.

Therefore, in deciding the amount of an award owed in favor of the plaintiffs, the arbitrators relied upon the terms and conditions of the March 12, 1998 contract. This contract contained various pricing options, including a fixed- or index-margin-per-acre. The arbitrators determined that the contract indicated that the parties elected the pricing option, which stated as follows:

“A. Pricing of Margin Per Acre. *The following pricing mechanism and payment arrangement shall apply to this Agreement....*

“3) Index Established:

“Koch agrees to establish an “Index” between the CBOT September 98/MGE September 98 (select one) wheat contract and the margin per acre. The index established using the following calculation:

“\$3.93 Sept. 98 futures x 100 - \$143 Index = \$250.00 Index Margin Per Acre

“Final pricing must occur on or before August 15, 1998. This pricing alternative is subject to both upside and downside moves in the selected wheat futures market.

“Final Margin Per Acre = \$ ____ index margin plus (minus) \$ ____ change in futures) x 100 = \$ ____ Total.”

Other provisions of the contract pertinent to this dispute included the following:

“H. Physical Delivery. *Koch shall accept physical delivery and Producer shall physically deliver all wheat produced pursuant to this Agreement to Koch at Koch’s call. Producer’s obligation to deliver is absolute and shall not be affected by other delivery obligations Producer may have. Koch’s call shall occur no later than August 1999....*

“P. F.S.A. Payments. *Producer shall be entitled to any Farm Services Agency (F.S.A.) payments in connection with the acreage which is the subject of this Agreement, and shall be solely responsible for compliance with any such agreements between Producer and F.S.A.”*

The parties subsequently entered into Koch Change Order number 64023-02, dated Aug. 13, 1998, which was signed by Hall. This change order specifically extended the deadline for establishing the price under “Section A: Option #3 Index Established: ‘Index between CB MGE September 98 wheat contract and margin per acre’” to April 15, 1999 at a cost of \$2 per acre.

The arbitrators determined that the parties contracted for 2,045.60 acres at 100-bushels-per-acre guaranteed. The contract provided that the price would fluctuate with the Minneapolis Grain Exchange futures market until the price was established, less an index margin of \$143 per acre. The deadline for pricing of this contract was extended by the change order to April 15, 1999. Regarding the plaintiffs’ claim for the FSA payments, the arbitrators relied upon the language in Paragraph P of the contract, as well as FSA’s “beneficial-interest” policy involving producer control over financial interests. In denying the plaintiffs’ claim for these payments from Koch, the arbitrators concluded that, while the plaintiffs were entitled under the contract to “any payments” had they been available, the plaintiffs were “solely responsible for compliance” with any FSA requirements to obtain such payments.

The Award

The arbitrators decided in favor of the plaintiffs, and granted an award of \$378,308. This award was based upon the following determinations:

A) Settlement Price (MLGE-May) – April 15, 1999 (\$3.31 ³ / ₄ per bushel x 100 acres):	\$331.75 per acre
B) Agreed Index Margin:	<u>- \$143.00 per acre</u>
C) Guaranteed gross returns:	\$188.75 per acre
D) Total Claim (\$188.75 per acre x 2,045.6 acres):	\$386,107
E) Price per bushel (\$386,107 ÷ 141,795 bushels):	\$2.722 per bushel
F) Contract roll charge:	\$2 per acre
Total Claim:	\$386,107
Less undelivered wheat of 41,566 bushels at \$2.722 per bushel:	- \$113,143
Less the roll charges:	<u>- \$4,091</u>
Original Balance Due on Contract:	\$268,873
<u>Interest @ 8 percent from April 15, 1999 (as of May 15, 2004):</u>	<u>+ \$109,435</u>
Total Due to Plaintiffs:	\$378,308

The arbitrators directed that the plaintiffs determine the proper allocation of this award among themselves.

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

Gary Jordan, Chair

President
Wright-Lorenz Grain Co., Inc.
Overland Park, Kan.

Michael Conklin

General Manager and Chief Executive Officer
Cooperative Agricultural Producers Inc.
Rosalia, Wash.

Gary Peintner

Manager
Amherst Co-op Elevator Inc.
Amherst, Colo.