



National Grain and Feed Association

Arbitration Decision

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April 29, 2004

Arbitration Case Number 2062

Plaintiff: Douglas C. Jones, Doniphan, Neb.

Defendant: ConAgra Foods Inc., Omaha, Neb.

Statement of the Case

This dispute involved a marketing agreement issued on March 11, 2002, between the plaintiff, Douglas C. Jones of Diamond J. Farms ("Jones"), and the defendant, ConAgra Foods Inc. d/b/a Peavey Co. ("ConAgra"). Under the terms of this agreement, ConAgra guaranteed a minimum revenue of \$405 per acre in exchange for Jones' delivery of a minimum of 82,500 bushels of corn from 550 designated acres. The agreement also provided for an achievable "Marketing Bonus Price," under which Jones and ConAgra would split any additional revenues that exceeded the guaranteed minimum at a predetermined percentage.

Jones maintained that he performed his delivery obligation pursuant to the marketing agreement. However, he alleged that ConAgra failed to market the crops to the best of its ability and failed to attain an adequate price per bushel given the market prices for the relevant time period that would have resulted in achieving a "Marketing Bonus Price." According to Jones, the local cash crop price per bushel had ranged from \$2.15 on July 1 to \$2.79 on Sept. 11, 2002, but that the market closing price had declined to \$2.34 when ConAgra sold the crops on April 15, 2003. Jones claimed that ConAgra could have executed strategies that would have resulted in a price of \$2.75 per bushel. Jones consequently sought damages against ConAgra amounting to \$36,662.40 (representing a price of \$2.74 per bushel – or an additional 40 cents per bushel – for each bushel delivered).

Jones further contended that when a ConAgra employee, Al Kamrath, worked with the company's marketing program, ConAgra was able to obtain prices "above the high with his aggressive marketing." Jones stated that in May 2002, Kamrath advised Jones that he was retiring from ConAgra. Jones' claims against ConAgra included a breach of the agreement arising out of Kamrath's retirement from ConAgra, given his prior integral involvement with the marketing program.

ConAgra maintained that it fulfilled its obligations under the agreement, and had no further obligations to Jones in this matter. ConAgra argued that the parties mutually agreed upon the terms and conditions of the agreement, and that at no time did Jones express any concerns. ConAgra also argued that to obtain the additional sum of \$36,622.40, as Jones contended he was owed, ConAgra would have had to price the corn on the highest trading day of the year – Sept. 11, 2002 – after which prices declined. ConAgra claimed that, in the end, the total revenue it ultimately obtained for the crops was less than the \$405-per-acre minimum guaranteed under the agreement. However, ConAgra said it nonetheless honored the agreement. With respect to Kamrath's involvement, ConAgra argued that it was not required under the agreement to keep Kamrath or any other specific individual involved in the marketing program.

The Decision

The arbitrators determined that the marketing agreement was issued on March 11, 2002 and was signed by both parties. The marketing agreement was consistent with NGFA Grain Trade Rule 1, which sets forth specific terms to be included in such a transaction, such as quantity, pricing, delivery and payment terms. The terms and conditions of this marketing agreement constituted the basis upon which the arbitrators reached their decision.

The arbitrators noted that the agreement specifically stated that, “[E]xcept in the event of Seller default as described below, the Minimum Price for the Crops shall be \$405/acre (unless adjusted by mutual agreement of the parties).” The arbitrators determined that the agreement also specified all the revenues and discounts to be applied to the guaranteed \$405-per-acre minimum.

The arbitrators concluded that, in accordance with the agreement, Jones was paid \$405 per acre on the 550 designated acres, less the discounts specified in the agreement. The agreement was based upon revenue per acre – not price per

bushel – and ConAgra satisfied the guaranteed minimum-revenue-per-acre requirement specified in the agreement. The arbitrators consequently denied Jones’ claims arising out of the price per bushel paid by ConAgra.

The arbitrators also considered closely the “Marketing Bonus” provision contained in the marketing agreement, and how such a bonus would have been calculated and divided among the parties under the agreement. However, the arbitrators determined that the agreement did not guarantee that such a bonus would be achieved. Nor did the agreement specify how it was to be achieved. Therefore, ConAgra did not breach the agreement on grounds that the revenue obtained did not meet the level at which a bonus could have applied. The arbitrators further concluded that the agreement did not specify a particular custodial guardian for the marketing program or that Kamrath or any other specific ConAgra employee would be involved in the transaction on ConAgra’s behalf. Consequently, Jones’ claim that ConAgra breached the agreement based upon Kamrath’s retirement also was denied.

The Award

Upon determining that ConAgra fully satisfied its obligations under the minimum-revenue-per-acre agreement, the arbitrators denied Jones’ claim of \$36,662.40 and declined to grant any award.

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

Jay Nelson, Chair
Director of Origination
Heartland Co-op
West Des Moines, Iowa

John Graverson
Merchandising Manager
Ray-Carroll Grain Growers Inc.
Richmond, Mo.

Gerald Jenkins
General Manager
Ursa Farmers Cooperative, Co.
Ursa, Ill.