



National Grain and Feed Association

Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922

Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

March 21, 2005

Arbitration Case Number 2071

Plaintiff: **Pattison Bros. Mississippi River Terminal Inc., Fayette, Iowa**

Defendant: **David Meyer and Doug Meyer d/b/a D&D Meyer Inc., New Prague, Minn.**

Statement of the Case

This arbitration case involved a dispute over the sale and delivery of Kandi food-grade soybeans between Pattison Bros. Mississippi River Terminal Inc. ("Pattison") and David Meyer and Doug Meyer d/b/a D&D Meyer Inc. ("D&D").

In the presentation of its case against D&D, Pattison submitted the following allegations:

- Pattison made a verbal agreement for an acreage contract with Philip Meyer for Kandi food-grade soybeans by telephone on Feb. 7, 2002. Philip Meyer was the agent dealing with Pattison on D&D's behalf. A joint venture existed between the various Meyer family entities (Meyer Brookside Farms, D&A Meyer Farms, and D&D Meyer) on the 1,500 acres involved in the acreage contract.
- Pattison then sent a written contract to Philip Meyer (contract number 35520). The contract contained the following specifications:
 - 1,500 acres of production;
 - the final premium price would be 75 cents over the applicable Chicago Board of Trade (CBOT) futures reference price; and
 - the document entitled "Food Grade Kandi Program for 2002 Production in Minnesota," which detailed the Kandi soybean grade requirements and quality criteria, was part of the contract terms.
- Although Philip Meyer did not sign the acreage contract or the "Food Grade Kandi Program for 2002 Program Production" grade requirements, he did not object to any of the terms or issue any

contract confirmations of his own. Therefore, based upon NGFA Grain Trade Rule 3(B), the acreage contract was legal and enforceable.

- A subsequent quantity contract was agreed to between Pattison and D&D for 12,000 bushels. The subsequent quantity contract expressly provided that "Kandi Soybeans" was the applicable "Grain and Grade" and that "Destination" grades were applicable. Although D&D did not sign the quantity contract confirmation, it did not object to any of the terms or send out any contract confirmations of its own. Therefore, based upon Grain Trade Rule 3(B), the quantity contract was legal and enforceable.
- While David Meyer was the individual who booked the quantity contract for D&D, the parties understood that Philip Meyer was the primary contact for coordination of logistics and delivery of D&D's Kandi soybeans.
- The subsequent pricing contract contained the following language:

"IF GRAIN IS REJECTED AND THE BUSHELS ARE FORWARD PRICED, THE CASH PRICE WILL BE DETERMINED USING THE FORWARD CONTRACTED FUTURES PRICE PLUS OR MINUS THE COMMERCIAL BASIS FOR THE DELIVERY POINT AT TIME OF DELIVERY, LESS TRUCK FREIGHT IF APPLICABLE, AND SUBJECT TO APPROPRIATE MARKET DISCOUNTS."

- Pattison's contract also expressly provided the following in item 12:

"Buyer may have and pursue any remedy allowed by law, and (i) Buyer shall be entitled to collect from Seller reasonable attorney's fees incurred by Buyer in connection with enforcement of this contract and/or the breach by Seller; (ii) Buyer shall be entitled to collect from Seller interest on any amount owing to Buyer by reason of Seller's breach, at the rate of 1 ½% per month, or fraction thereof, until paid."

- The contract confirmation also provided in item 2 that, *"Except as otherwise expressly provided for herein, this contract is subject to National Grain and Feed Association trade rules in effect on the date hereof."*
- On March 17, Pattison contacted Philip Meyer to advise that Pattison would begin accepting delivery of the Kandi soybeans on March 26 at Clayton, Iowa. Philip Meyer agreed that the Meyer family farming operations would deliver up to 25,000 bushels between the three farm entities (D&D Meyer, D&A Meyer and Meyer Brookside Farms). Pattison and Meyer also agreed to change the delivery location from Mapleton, Minn., to Clayton, Iowa, and that Pattison would pay the additional truck freight for the longer haul.
- Meyer delivered two loads on March 27 in the account of D&D, both of which failed to meet quality specifications.
- On March 28, D&D delivered one additional load to Clayton, Iowa, which also had a moisture level higher than the contract specified.
- Pattison informed D&D that it could deliver the Kandi soybeans to St. Paul, Minn., in May 2003, if it could reduce the moisture content to acceptable levels.
- The parties mutually agreed to extend the delivery period on D&D's contract through May 2003.
- On May 5, 2003, David Meyer informed Pattison that Philip Meyer no longer would be the contact person for D&D. David Meyer also acknowledged the agreement made with Pattison on D&D's behalf by Philip Meyer to extend the delivery period through May 2003.
- On May 9, 2003, D&D delivered one load of Kandi soybeans to Mapleton, Minn., to see if the moisture content had decreased. The load

exceeded the moisture level specified in the contract, but Pattison agreed to accept the load and put it into a small bin at Mapleton, and run the fan to reduce the moisture level. David Meyer agreed to continue running the fan on D&D's farm bin.

- On May 12, 2003, Pattison met with D&D to discuss options on this contract. D&D proposed that the moisture levels would decrease as the bin was drawn down, and that there would be enough dry soybeans in the bin to fill the 12,000-bushel contract. At the conclusion of the meeting, D&D agreed to communicate moisture levels to Pattison as the contents of the bin were drawn down, and when the moisture levels reached an acceptable level, D&D would haul Kandi soybeans to St. Paul to fill the contract obligations.
- On May 13 and 14, David Meyer left messages with Pattison to advise that the moisture levels were not decreasing.
- On May 14, Pattison contacted D&D stating that it would allow delivery of the higher-moisture Kandi soybeans to Mapleton, and utilize the small bin and fan to reduce the moisture levels so that D&D could continue to deliver and receive the food-grade premium.
- On May 19, D&D contacted Pattison stating that the quality of the soybeans never improved, and that in fact, D&D had hauled all of the Kandi soybeans to Savage, Minn., and no more Kandi stocks were available to ship to Pattison.
- From May 20 through June 3, Pattison maintained that it made further efforts to contact D&D to discuss the matter.
- Pattison maintained that it became apparent during a meeting on June 5, 2003, that D&D was not going to fulfill its contract. Pattison consequently deemed D&D to be in default and calculated its damages to be \$5,240.46 on the undelivered portion (8,590.10 bushels) of the 12,000-bushel contract.
- Pattison invoiced D&D and requested payment on June 9, 2003, via Federal Express, which was signed for on June 11.

D&D's response to Pattison's claims consisted entirely of the following statement:

"It is the position of D&D Meyer that its contract obligation with Pattison Bros ended by its terms on April 15, 2003. The Affidavits of Chad Stannard or Russ Lueck are not relevant except by omission."

Nowhere is there an indication that D&D Meyer failed to make a timely delivery during the contract period or agreed to extend the contract after it expired. The fact that D&D Meyer was willing to sell the soybeans after they ceased to be obligated to do so, is not relevant. The fact that Pattison Bros. had dealings with Phil Meyer is not relevant.”

THE DECISION

The arbitrators determined that the original acreage contract (number 35520) was valid. The arbitrators similarly decided that the subsequent quantity contract (number 37034) for 12,000 bushels also was valid and enforceable.

Pattison filed extensive information with its first argument that provided a detailed account of its version of the facts and issues involved in this case. In its first argument, D&D only responded with respect to the four points, as quoted above. D&D did not contest the remainder of Pattison’s allegations. Neither party submitted additional arguments in this case.

In their close analysis of the four points presented by D&D, the arbitrators concluded as follows:

- D&D claimed that its contractual obligations with Pattison ended on April 15, 2003 when the life of the contract reached its last delivery date. The arbitrators disagreed based upon NGFA Grain Trade Rule 28, which establishes the various possible solutions to finalize a contract after the seller or buyer fails to perform. Regardless of which party fails to perform, the arbitrators determined that a contract does not become null and void and contractual obligations do not end simply because the delivery period has expired. Paragraphs (A) and (B) of NGFA Grain Trade Rule 28 clearly state that the contract delivery period be extended; a buy-in or sell-out of the account be performed using due diligence; or the defaulted portion of the contract be cancelled at fair market value based upon the close of market.
- D&D argued that the affidavits of Chad Stannard and Russ Leuck were not relevant, and that there was no indication that D&D failed to make timely delivery during the contract period or agreed to extend the contract after it expired. However, the arbitrators determined that D&D was obligated under the contract because it was adequately documented that binding contracts were in effect and D&D failed to provide any documents or information to the contrary.

- D&D argued that its willingness to sell the soybeans after it no longer was obligated to do so was irrelevant. The arbitrators concluded that D&D was then – and still is – obligated to provide adequate settlement on this contract. Therefore, D&D’s agreement to deliver soybeans after the April 30, 2003 date was indeed relevant.
- D&D argued that Pattison’s dealings with Philip Meyer were irrelevant. The arbitrators agreed with D&D’s position on this issue, but determined that it did not affect the parties’ contractual obligations.

In conclusion, based upon the documentation provided in this case, the arbitrators awarded Pattison \$5,240.46. The arbitrators further concluded that Pattison was entitled to interest from June 11, 2003 (the date of receipt of the invoice sent by Pattison via Federal Express) through the date of collection of the award from D&D. However, the arbitrators decided that interest should be awarded at a rate that better reflects current finance charges than was claimed by Pattison. The arbitrators determined to apply 6 percent as the appropriate interest rate in this case. Because of Pattison’s use of poor contract language, failure to record alleged verbal agreements, and other factors, the arbitrators decided that Pattison was not entitled to collect attorney fees.

THE AWARD

The arbitrators, therefore, ordered D&D to pay \$5,240.46, plus interest, which shall accrue at a rate of 6 percent per annum from June 11, 2003 until date of payment. Pattison’s request for attorney fees was denied.

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

Tom Bressner, *Chair*
General Manager
Assumption Cooperative Grain Co.
Assumption, Ill.

Jack Heim
General Manager
Walton Agri-Service Inc.
Upper Sandusky, Ohio

Lon Saucier
Director, Midwest Grain Operations
ConAgra Food Ingredients Co.
Omaha, Neb.