



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 16, 2006

Arbitration Case Number 2102

Plaintiff: Boyd Charles, Stoughton, Saskatchewan, Canada

Defendant: Access Marketing, Eden Prairie, Minn.

Statement of the Case

This dispute involved a contract for the sale of wheat by the plaintiff, Boyd Charles (Charles), to the defendant, Access Marketing (Access).

On Dec. 4, 2003, Charles and Access entered into a binding contract for the purchase and sale of "Bio Suisse Approved Spring Wheat" to be loaded into five containers for shipment January-March 2004 (Access purchase contract no. 20150). The contract originally provided that each container hold approximately 880 bushels. In March 2004, the parties agreed by telephone to increase the contracted amount to a total of 15,000 bushels.

On April 9, 2004, Access notified Charles that delivery was to occur in late April. Access also requested that Charles present the permit required for export of the wheat from Canada. Charles declined to obtain the export permit because of the 67-cents-per-bushel buyback imposed by the Canadian Wheat Board. Charles argued that Access should be responsible for payment of the buyback because the wheat was purchased "F.O.B. Stoughton, SK." On April 19, Charles notified Access

by telephone of its alleged default for not taking delivery during the timeframe stated in the contract. Access, in turn, provided written notice dated April 19 of its cancellation of the contract and buy-in of the contracted bushels.

Access stated that with respect to its costs for the buy-in of the defaulted contract volume, the cancellation price was the same as the original contract price. Charles stated that the market value of the wheat at the time the market closed on the next business day after the delivery period – April 1 – was 89-cents-per-bushel less than the contract price.

Charles' claim for damages (in Canadian funds) was as follows:

15,000 bushels at 89-cents per-bushel:	\$13,350.00
Interest on the wheat value at 24 percent per annum (<i>April 1, 2004 - July 31, 2004</i>):	\$11,130.41
Legal Fees:	\$ 1,500.00
Total Damages Claimed by Charles:	\$25,980.41

The Decision

The arbitrators decided that the case presented three principal issues to resolve:

1. Breach of contract related to the delivery period:

Based upon the documentation and arguments submitted by the parties, the arbitrators determined that there was mutual agreement between the parties for extension of the delivery period until the controversy surfaced regarding which party would be responsible for the Canadian Wheat Board buyback.

2. Responsibility for Canadian Wheat Board buyback:

The arbitrators carefully considered the parties' arguments. The arbitrators decided that the fact that the wheat was bought "F.O.B. Stoughton, SK" was irrelevant to the question of clear title. The arbitrators concluded that it was the responsibility of Charles, as the seller, to deliver clear title to the wheat to Access, and that clear title only was obtainable by Charles providing a Canadian Wheat Board export permit. The arbitrators determined that for the seller to be responsible for the Canadian Wheat Board buyback was a normal trade practice.

The arbitrators also considered that the contract between the parties referred to export taxes as follows: *“Any tax and/or customs or import or export duties or other Governmental charge upon the production and/or shipment of the commodity herein specified imposed by Federal, State, Municipal or other governmental authorities shall be paid by the seller.”*

The arbitrators determined that this clause in the contract supported and was consistent with normal trade practice, which indicated that the seller was responsible for the buyback. However, the

arbitrators observed that the seller’s responsibility could have been made clearer, as it was in the buy-in purchase contract, which specifically stated: *“Any Canadian Wheat Board obligations are the responsibility of the farmer.”*

- 3. Buy-in value:** The arbitrators determined that Access provided documentation, including the buy-in purchase contract with another seller, which corroborated that the buy-in value was the same as in the original contract. Charles proposed an alternative buy-in value, but the arbitrators concluded that Charles did not provide a basis upon which they could evaluate his pricing calculations.

The Award

Accordingly, the arbitrators ruled in favor of Access Marketing. The arbitrators denied Boyd Charles’ claim and declined to grant any award.

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

Keith Hainy, Chair
General Manager
North Central Farmers Elevator
Ipswich, S.D.

Francis J. Malecha
Senior Vice President, Grain Group
Saskatchewan Wheat Pool
Regina, Saskatchewan, Canada

Darcy Oliphant
Merchandising Manager
Thompsons Limited
Blenheim, Ontario, Canada

Arbitration Appeal Case Number 2102

Appellant: Boyd Charles, Stoughton, SK, Canada

Appellee: Access Marketing, a Division of Agri Trading Corp., Eden Prairie, Minn.

Statement of the Case

The Arbitration Appeals Committee individually and collectively reviewed all evidence submitted in Arbitration Case Number 2102. The Arbitration Appeals Committee also reviewed the findings and conclusions of the original arbitration committee.

The Decision

The Arbitration Appeals Committee unanimously affirmed the decision of the original arbitration committee in favor of the appellee, Access Marketing.

The Award

Accordingly, the Arbitration Appeals Committee denied Boyd Charles' claim and declined to grant any award.

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

John L. McClenathan Jr., Chair
Vice President – Grain Group
Archer Daniels Midland Co.
Decatur, Ill.

John C. Anderson
Chief Executive Officer
Ritzville Warehouse Co.
Ritzville, Wash.

Chuck Elsea
Senior Vice President
The Scoular Co.
Salina, Kan.

Edward P. Milbank
President
Milbank Mills Inc.
Chillicothe, Mo.

Arthur Nor
Grain Manager
Hamilton Farm Bureau Co-op Inc.
Hamilton, Mich.