



National Grain and Feed Association

Arbitration Decision

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April 1, 2008

Arbitration Case Number 2162

Plaintiff: Lathrop Feed and Grain Inc., Lathrop, Mo.

Defendant: Hannebaum Grain Co. Inc., Salina, Kan.

Statement of the Case

This dispute centered upon a series of six contracts for the sale of corn by Lathrop Feed and Grain Inc. (“Lathrop”) to Hannebaum Grain Co. Inc. (“Hannebaum”).

One of the six contracts provided for the delivery of 25,000 bushels by May 11, 2006. Each of the other five contracts provided for the delivery of 50,000 bushels for each of the five succeeding months – June through October 2006 – for a total of 250,000 bushels under those five contracts.

All six were basis contracts subsequently priced through the exchange of futures. Contract confirmations were sent to Lathrop by both Hannebaum and the broker used in these trades. Lathrop did not issue confirmations of its own, but did sign both Hannebaum’s and the broker’s confirmations.

In late June, Hannebaum was behind on accepting deliveries under the May and June contracts. Lathrop sought to cancel the 50,000-bushel June contract, although the broker’s confirmation allowed for a carry charge of 1-cent each 10 days for delivery or pickup after the contract end date. After some negotiations between the parties, the June contract was cancelled on July 12, through an exchange of futures. At that same time, Lathrop bought futures to cancel 10,000 bushels of the May contract.

By mid September, contractual commitments for all of the 50,000 bushels from the July contract and approximately 30,000 bushels from the August contract had been satisfied, leaving

an approximate balance of 20,000 bushels from the August contract and all 50,000 bushels from the September contract to ship during the last half of September. The broker’s confirmations, again, allowed for a carry charge of 1-cent each 10 days for delivery or pickup after the contract end date.

As the result of negotiations between Lathrop and Hannebaum that ultimately were unsuccessful, no actions were taken until Oct. 2, when Lathrop alleged that it left a message on Hannebaum’s answering machine indicating that Lathrop intended to sell futures to cancel 70,000 bushels of unshipped grain. Hannebaum maintained that it received no such message on its answering machine, and subsequently did not purchase futures to offset Lathrop’s sale. No written or follow up communications regarding the trades were exchanged by either party.

The parties consequently disputed the balance of any bushels yet to be delivered under the contracts. Based upon its partial cancellation of the August contract and cancellation of the entire September contract, Lathrop informed Hannebaum on Nov. 14, 2006 that Hannebaum had picked up its last load. After sporadic conversations between the parties in December 2006 and January 2007, Lathrop sent copies of all tickets to Hannebaum, at which time Hannebaum said the discrepancy of slightly more than 77,000 cancelled bushels became evident. On Jan. 26, 2007, Hannebaum bought futures to cover the cancellation by Lathrop and invoiced Lathrop for the market difference.

The Decision

The arbitrators reached the following determinations in rendering their decision:

- ▶ The contract confirmations issued by the broker were valid and binding upon both Lathrop and Hannebaum. NGFA Grain Trade Rule 3(C) states that upon receipt of a written confirmation from a broker, “*the parties shall carefully check all specifications, therein, and upon finding any differences, shall immediately give notice to the other party to the contract and to the broker,*” and if no party gives such notice, “*the terms and specifications contained in the confirmation issued by the broker shall govern the contract.*”
- ▶ The exchange of futures was the normal and accepted practice of pricing or canceling contracts between the two parties.
- ▶ Lathrop’s contention that a message was left on Hannebaum’s answering machine in and of itself was insufficient as an accepted method of notification regarding contract cancellations. The NGFA Trade Rules provide that a telephone or voice communication, such as that Lathrop alleged occurred, is to be confirmed in writing. [NGFA Grain Trade Rules 3(A), 28(A) and (B), and 30(C)(3)].
- ▶ Hannebaum provided support and documentation for its position concerning both the original contracts and subsequent cancellations.
- ▶ Lathrop failed to provide to the arbitrators any written documentation it had conveyed to Hannebaum regarding the original contracts, cancellations, futures exchanges or buy backs. Phone logs presented by Lathrop were deemed by the arbitrators to be inadequate documentation of the claim that Hannebaum was properly notified of the pending cancellation on Oct. 2, 2006.
- ▶ In accordance with the confirmations sent to Lathrop from the broker, carry charges on late-shipped bushels were due to Lathrop.

The Award

Therefore, it was the unanimous decision of the arbitrators that Hannebaum be awarded damages as follows:

32,943.75 bushels @ \$1.555 per-bushel (broker’s confirmation contract # 2283):	\$ 51,227.53
44,450.73 bushels @ \$1.505 per-bushel (broker’s confirmation contract # 2284):	\$ 66,898.35
(Less Carry Charges):	-\$ 9,858.70
Total due Hannebaum:	\$108,267.18

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

Sam Hudnutt, Chair
Grain Merchandiser
Citizens LLC
Charlotte, Mich.

Fred Connolly
Merchandiser
Perdue Farms Inc.
Salisbury, Md.

Ron Mitzel
Vice President
Dakota Mill and Grain Inc.
Rapid City, S.D.