



National Grain and Feed Association

Arbitration Decision

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January 15, 2009

Arbitration Case Number 2170

Plaintiff: Michigan Agricultural Commodities Inc., Lansing, Mich.

Defendant: Mike Tessmer, Almont, Mich.

Statement of the Case

This case involved the following three basis contracts for grain entered into between the buyer, Michigan Agricultural Commodities Inc. (MAC), and the seller, Mike Tessmer (Tessmer): 1) MAC purchase contract C000961, which provided for the purchase and sale of 17,000 bushels of U.S. No. 2 yellow soybeans (contract 961); 2) MAC purchase contract C000971, which provided for the purchase and sale of 40,000 bushels of U.S. No. 2 yellow corn (contract 971); and 3) MAC purchase contract H000942, which provided for the sale of 35,000 bushels of U.S. No. 2 yellow corn (contract 942).

MAC said it fulfilled its obligations under each of the contracts, including rolling and pricing the contracts according to Tessmer's instructions on various occasions, as well as making payments to Tessmer. MAC argued that the principal disputes between the parties arising under the contracts involved Tessmer's alleged failure to communicate with MAC during key contract performance and pricing periods. Tessmer responded by alleging that MAC failed to price the contracts properly, and improperly altered the grades and weights under the contracts. The parties also disputed the nature and substance of various telephone and written communications between them.

The pricing and arguments presented by the parties concerning each of the three contracts are summarized below:

▶ **Contract 961:** MAC priced 17,472.46 bushels under contract 961 at \$4.9125 per bushel. MAC claimed it was due \$16,731.57 from Tessmer for final settlement, which included advance payments made to Tessmer. Tessmer referred to alleged discrepancies between the contracts

and documents that were submitted by the parties. In particular, Tessmer argued that contract 961 provided for a "zero basis," whereas MAC contended that the contract provided for a basis of -0.26. Tessmer also alleged that MAC improperly altered the grades and weights applicable to the contract. Tessmer further disputed that he had not agreed to the rolling and pricing changes executed by MAC. According to Tessmer, he was due \$5,134.53 from MAC under contract 961, representing the difference between an amount owed of \$5.1725 per bushel for 17,586.85 bushels and the amount assessed by MAC.

▶ **Contracts 971 and 942:** After pricing out the open corn contracts and calculating the final settlement, MAC claimed it was due \$1,168.79 from Tessmer under contracts 971 and 942. MAC alleged that Tessmer failed to respond to MAC's request to price the corn contracts. But Tessmer disputed MAC's pricing of the contracts, and argued that MAC improperly changed the basis levels. Under Contract 971, Tessmer asserted that MAC improperly changed the basis from zero to -0.25, resulting in damages of \$10,117.79 due to Tessmer for 40,471.18 bushels delivered under the contract. Under contract 942, Tessmer maintained that MAC improperly changed the basis from zero to -0.23, and assessed a 0.145-per-bushel spread to roll the contract, resulting in damages due to Tessmer of \$16,181.40 (43,150.42 bushels delivered x 0.375 cents per bushel). Tessmer also claimed that under both contracts, he was due an additional \$20,487.29 or \$24,668.37 (based upon when the arbitrators determined that MAC should have priced the corn contracts).

The Decision

Upon close review of the facts and arguments submitted by both parties, the arbitrators reached the following conclusions:

▶ **Contract 961:** With respect to the pricing of contract 961, Tessmer was obligated to respond to MAC's attempts at communication and discuss any discrepancies concerning the contract's basis levels. NGFA Grain Trade Rule 4 presumes that parties to a contract will communicate with one another over alleged contract discrepancies, as in this instance particularly during the critical pricing and performance stages under the contract. By failing to adequately communicate with MAC or respond to MAC concerning the discrepancies alleged in this contract, the arbitrators determined that the -0.26 basis was applicable.

However, concerning the weights and grades issues arising under contract 961, the arbitrators determined that the contract called for destination weights and grades. The arbitrators concluded that MAC should have settled the contract on weights and grades at the delivery point. Therefore, the arbitrators determined that Tessmer was entitled to \$561.94 for the 114.39 bushel difference at the -0.26 basis (\$4.9125-per-bushel) contract price, as well as to the \$81.68 difference in the discounts. As a result of these adjustments, MAC was due \$16,087.95 under contract 961.

▶ **Contracts 971 and 942:** Concerning the pricing of contracts 971 and 942, the arbitrators were unable to determine if Tessmer provided a market order or limit order to price the corn. The arbitrators concluded that Tessmer apparently made insufficient effort to communicate with or respond to MAC regarding

the pricing to be utilized under the contracts. MAC proceeded to price the contracts in accordance with how it informed Tessmer it would. Because of the lack of communication between the parties, as well as because the type of pricing order provided could not be determined, the arbitrators concluded that both parties shared the blame for the resulting dispute. MAC priced the contracts at 29½ cents per bushel less than the pricing point ordered by Tessmer. Concluding that the parties should share the difference equally, the arbitrators concluded that MAC owed an additional 15 cents per bushel for the 83,621.60 bushels delivered under the corn contracts. Adjusting that total amount of \$12,543.24 for the amount previously due to MAC of \$1,168.79, the arbitrators determined that MAC owed \$11,374.45 to Tessmer under contracts 971 and 942.

▶ **Other Issues:** Tessmer also asserted that he was owed \$2,580 pursuant to a court order requiring MAC to reimburse Tessmer for attorney fees incurred in a court action that preceded the referral of this dispute to NGFA arbitration. Since it appeared that MAC did not dispute this contention and the parties anticipated that the arbitrators would incorporate this amount into this decision, the arbitrators' award included the amount of \$2,580 due to Tessmer pursuant to the court order.

The parties also sought reimbursement of each other's legal fees, interest and costs of collection for this arbitration case. The arbitrators determined that because both parties were responsible at least to some extent for the dispute, they determined that each party was responsible for its own expenses and declined to award interest to either party.

The Award

In computing damages, the arbitrators relied upon the following assessments:

Amount Due to MAC under Contract 961:	\$16,087.95
Amount Due to Tessmer under Contracts 971 and 942:	-\$11,374.45
Amount Due to Tessmer Pursuant to Court Order:	-\$ 2,580.00
Total Amount Due to MAC:	\$2,133.50

THE ARBITRATORS CONSEQUENTLY AWARDED \$2,133.50 TO MAC.

SUBMITTED WITH THE UNANIMOUS CONSENT OF THE ARBITRATORS, WHOSE NAMES APPEAR BELOW:

Jerome T. Rowe, Chair
Manager
Heritage Grain Cooperative
Dalton City, Ill.

Keith Newman
Grain Department Manager
United Farmers Cooperative
George, Iowa

Mary Willard
Senior Paralegal
Cargill Inc.
Minneapolis, Minn.