



National Grain and Feed Association

Arbitration Decision

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December 3, 2009

Arbitration Case Number 2206

Plaintiff: Bunge North America Inc., St. Louis, Mo.

Defendant: J Farms Inc., Bloomingburg, Ohio

Statement of the Case

At issue in this case was whether J Farms Inc. (J Farms) agreed to sell to Bunge North America Inc. (“Bunge”) 30,000 bushels of soybeans for delivery in December 2006 (the “2006 Contract”) and an additional 10,000 bushels of soybeans for delivery in October and November 2007 (the “2007 Contract”).

Prior to 2006

In March 2004, Bunge entered into two trades with J Farms for the combined total purchase of 30,000 bushels of soybeans. Keith Johnson, President of J Farms, signed the confirmations issued by Bunge, delivered on the contracts and received payment for the soybeans. Then, in 2005, Bunge entered into one trade with J Farms for the purchase of 15,000 bushels of soybeans. This time, J Farms did not sign the confirmation issued by Bunge, but did deliver on the contract and received payment for the soybeans. Throughout this time period, all confirmations and all checks were sent to P.O. Box 117, Mt. Sterling, OH 43143-0117. J Farms did not send any written confirmations for the trades.

2006

With respect to the 2006 Contract, Bunge issued confirmation number 0015950 on May 1, 2006 for the purchase of 30,000 bushels of U.S. No.1 yellow soybeans by Bunge from J Farms at \$6.15 per bushel, to be delivered from Nov. 27 through Dec. 31, 2006. The confirmation was sent to P.O. Box 117, Mt. Sterling, OH 43143-0117 (the same address used for the 2004 and 2005 confirmations and checks). While the signature for J Farms on the confirmation was illegible, the confirmation was signed by someone on behalf of J Farms. J Farms did not send a written confirmation for the trade.

According to the parties, William Potts signed the confirmation on behalf of J Farms. J Farms denied that Mr. Potts had the authority to enter into the trade with Bunge, but Mr. Johnson acknowledged that Mr. Potts was an employee and had been told to contact Bunge to obtain information about current pricing, and that J Farms had approved “a few loads” for sale and delivery to Bunge.

In addition to the signature on the confirmation, J Farms delivered six loads (5,115.66 bushels) in early December 2006 and was paid for the soybeans. The checks were sent to P.O. Box 117, Mt. Sterling, OH 43143-0117 (the same address used for the confirmation of the 2006 Contract and all prior confirmations and checks).

The parties dispute what conversations occurred thereafter, as well as when and with whom. What is known is that at least a few of the conversations were with Mr. Johnson, during which he did not clearly deny the existence of the contract. Further, Bunge sent J Farms a confirmation of change extending the delivery period through Jan. 31, 2007. The confirmation of change was sent to P.O. Box 117, Mt. Sterling, OH 43143-0117 (the same address used for the confirmation of the 2006 Contract, the checks for the six loads delivered in 2006 and all prior confirmations and checks). J Farms denied receiving the confirmation of change and Mr. Johnson claimed J Farms was unaware of any contract because the address to which the confirmation was sent “[was] NOT an address related to J Farms in any way”. Mr. Johnson further stated the confirmation of change was not signed or returned “because [he] was unaware of any contracts that had been made.”

After being unable to confirm that the extension of the delivery period had been agreed upon and the terms of the confirmation of change accurately reflected the extension, Bunge issued a cancellation of contract on Jan. 24, 2007.

2007

With respect to the 2007 Contract, Bunge issued confirmation number 0017319 on Nov. 14, 2006, describing the trade as the purchase of 10,000 bushels of U.S. No.1 yellow soybeans by Bunge from J Farms at \$6.77 per bushel, to be delivered from Oct. 1 through Nov. 30, 2007. The confirmation was sent to P.O. Box 117, Mt. Sterling, OH 43143-0117 (the same address used for the 2004, 2005 and 2006 confirmations and checks). This confirmation was not signed by J Farms. Neither did J Farms send a written confirmation for the trade.

Similar to the 2006 Contract, the parties dispute what conversations occurred, as well as when and with whom. What is known is that at least a few of the conversations were with Mr. Johnson, during which he did not clearly deny the existence of the contract.

Upon confirmation that J Farms had failed to timely deliver on the 2007 Contract, Bunge issued a cancellation of contract on Dec. 3, 2007.

The Decision

With respect to the 2006 Contract, the arbitrators found that Bunge properly issued a confirmation for the trade. NGFA Grain Trade Rule 3(A) required J Farms to “immediately notify [Bunge] by telephone of and confirm by written communication” any material differences. J Farms failed to do this. While Keith Johnson, President of J Farms, contended that J Farms did not know about the 2006 Contract, the confirmation was signed on behalf of J Farms and the address to which the confirmation was sent was the same address to which were sent all prior confirmations (some of which were signed by Mr. Johnson and returned to Bunge) and all prior checks (all of which were cashed by J Farms). The arbitrators concluded that Bunge had every reason to believe J Farms received and reviewed the confirmation, and that the terms were accurate since J Farms did not notify Bunge of any differences.

Mr. Johnson further contended that Mr. Potts did not have the authority to enter into a contract on behalf of J Farms. Mr. Johnson did, however, admit that Mr. Potts had the actual authority to contact Bunge to obtain information about current pricing and to sell a few loads of soybeans to Bunge. As to Mr. Potts’ apparent authority, J Farms did not communicate any limitation of Mr. Potts’ authority to Bunge.¹ In addition, six loads were delivered to and paid for by Bunge by J Farms, and conversations about further delivery occurred. Finally, since the quantity in the 2006 Contract was the same as 2004, the quantity being sold would appear reasonable to Bunge. Under the circumstances, Bunge had every

reason to believe as it did that Mr. Potts possessed the necessary authority to enter into the contract on behalf of J Farms and was justified in assuming the commitments made by Mr. Potts were those of J Farms.

With respect to the 2007 Contract, Bunge again properly issued a confirmation for the trade. NGFA Grain Trade Rule 3(A) required J Farms to “immediately notify [Bunge] by telephone of and confirm by written communication” any material differences, which J Farms failed to do. As to whether Mr. Potts had the authority to bind J Farms, Mr. Johnson, again admitted Mr. Potts had the actual authority to contact Bunge to obtain information about current pricing and to sell a few loads to Bunge, and there was no communication to Bunge of any limitation of Mr. Potts’ authority. Finally, the quantity in the 2007 Contract was less than contracted in 2005; but given the time of year the contract was entered into and the time for delivery, and the fact that the quantity was smaller, the quantity being sold would appear to be reasonable to Bunge. Under the circumstances, the arbitrators concluded Bunge had every reason to believe as it did that Mr. Potts possessed the necessary authority to enter into the contract on behalf of J Farms, and was justified in assuming the commitments made by Mr. Potts were those of J Farms.

After entering into valid and enforceable contracts, the arbitrators concluded Bunge properly cancelled the contracts once it was able to determine that J Farms had defaulted. J Farms did not dispute the cancellation of the contracts or the calculation of the damages.

The Award

The arbitrators awarded \$59,326.69 to Bunge, plus interest at 6.5 percent per annum [the Prime Rate as published in the Wall Street Journal on the date the case was filed pursuant to NGFA Arbitration Rules Section 8(m)] accruing from the date of notice of this decision to J Farms until paid.

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

Jann Eichlersmith, Chair
Assistant General Counsel
The Scoular Company
Minneapolis, Minn.

Nathan LaFerrier
Grain Merchandiser
Southeast Farmers Elevator
Elk Point, S.D.

Chris Peha
Marketing Manager
Northwest Grain Growers
Walla Walla, Wash.

¹ Keith Johnson, President of J Farms, claimed he notified Bunge that Mr. Potts lacked the authority to enter into the contracts on behalf of J Farms. In reviewing the information provided by J Farms, even if this is correct, the notice was conveyed to Bunge in February 2007, well after the parties already had entered into the 2006 and 2007 Contracts.