



National Grain and Feed Association

Arbitration Decision

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October 22, 2009

Arbitration Case Number 2214

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

Defendant: JM&M Farms Inc., Reynell, Ark.

Statement of the Case

The plaintiff, Bunge North America Inc. (Bunge), claimed damages against JM&M Farms Inc. (JM&M) totaling \$59,784.32 – \$284.13 for the market difference and cancellation fees on a soybean contract, and \$65,094.78 for the market difference and cancellation fees on two wheat contracts, less the proceeds for wheat delivered under contract number 109597 in the amount of \$5,594.59.

Bunge also claimed interest on this amount from May 11, 2007 on the soybean contract, and from Aug. 1, 2007 on the wheat contracts. Bunge also sought an amount equal to Bunge's costs incurred in this proceeding, including but not limited to, the arbitration fee in the amount of \$997.84.

Bunge submitted its arbitration complaint to the National Grain and Feed Association (NGFA). The complaint alleged that JM&M Farms Inc. failed to perform on signed contract numbers 109597 and 109636 (wheat contracts) and contract number 109540 (soybean contract). Contract number 109597 for delivery of 20,000 bushels of U.S. No. 2 soft red winter wheat had an undelivered balance of 11,193 bushels. Meanwhile, no deliveries were applied against contract number 109636, which called for delivery of 25,000 bushels of U.S. No. 2 soft red winter wheat. Contract number 109540 for delivery of 10,000 bushels of U.S. No. 1 yellow soybeans had an undelivered balance of 191 bushels.

Each of the contracts stated that it was, "SUBJECT TO RULES OF: NATIONAL GRAIN AND FEED ASSOCIATION." The contract also contained the following provision under its "GENERAL TERMS" section:

"The terms of this confirmation are subject in all respects to the rules and regulations of the exchange, board, or association designated above. If seller is not a member of said exchange, board, or association, then the rules of the National Grain and feed Association shall govern, Buyers and Sellers agree that all disputes and controversies shall be arbitrated according to said rules and regulation, and that judgment may be entered on the arbitration award in any court of competent jurisdiction."

Soybean Contract:

On Jan. 12, 2006, Bunge purchased 10,000 bushels of U.S. No. 1 yellow soybeans from JM&M for delivery to Bunge's Pine Bluff, Ark., elevator between Oct. 1 and Nov. 30, 2006. Bunge issued purchase confirmation number 199540. The soybeans contract was signed by Mark Sheppard on behalf of JM&M. The soybeans contract was a Hedge to Arrive contract.

On Dec. 8, 2006, Bunge extended the contract to Dec. 31, 2006. On Jan. 2, 2007, JM&M delivered the balance of the soybeans (except for 190.69 bushels), and was paid for the soybeans delivered. Based upon statements made by Sheppard, Bunge expected JM&M to deliver the balance due under the contract. However, there were no soybeans delivered against the contract during the balance of the winter or spring of 2007. On May 11, 2007, after notifying Sheppard of its intention to cancel the unfulfilled portion of the soybean contract, Bunge cancelled the contract. Bunge sent notice of cancellation and an invoice for the market difference and cancellation fees of \$284.13 owed.

Wheat Contracts:

On March 28, 2006, Bunge purchased 20,000 bushels of U.S. No. 2 soft red winter wheat from JM&M for delivery to Bunge's Pine Bluff, Ark., elevator between June 1 and July 31, 2007. Bunge confirmed its purchase by issuing purchase confirmation number 109597. Sheppard signed on behalf of JM&M. This purchase was a Hedge to Arrive contract. On June 1, 2006, Bunge purchased an additional 25,000 bushels of U.S. No. 2 soft red winter wheat from JM&M for delivery to Bunge's Pine Bluff, Ark., elevator between June 1 and July 31, 2007. Bunge confirmed its purchase by issuing purchase confirmation number 109636 and Sheppard also signed this agreement on behalf of JM&M. This contract was also a Hedge to Arrive contract.

Between June 1 and June 4, 2007, JM&M delivered 7,242.08 bushels of wheat that were applied to contract number 109597. On June 4 and

5, 2007, JM&M established the basis on both wheat contracts. On June 5, JM&M delivered another 1,546.92 bushels of wheat. Bunge also applied these bushels against contract number 109597.

In mid-June 2007, Sheppard spoke with Bunge's Pine Bluff, Ark., elevator manager to inform him that JM&M would not have enough wheat to fulfill its contracts. At that time, Sheppard did not indicate how much wheat JM&M would be able to deliver. Sheppard asked Bunge if it would roll the wheat contracts to the following year, but Bunge advised that it would not do so. Sheppard then advised that he would speak to Bunge's Southern District commercial manager. Bunge's Pine Bluff, Ark., elevator manager then also discussed the contracts with a Bunge grain marketing specialist to confirm that Bunge would not roll the contracts forward. The elevator manager then contacted Sheppard to confirm that JM&M's contracts would not be rolled. They discussed the options of either delivering the wheat by the end of the contract period or cancelling the contracts. Sheppard stated he did not want to cancel the contracts.

During the first week of July, Bunge's elevator manager and grain marketing specialist visited Sheppard at his farm shop. During the

visit, Sheppard repeated that he was going to request a meeting with Bunge's Southern District commercial manager. Sheppard ultimately traveled to the Pine Bluff, Ark., elevator to discuss the status of his open contracts with the Southern District commercial manager. Another Bunge district manager also attended this meeting. Sheppard explained that he did not have enough wheat to fill the contracts, and also advised that he did not want to cancel the contracts.

Bunge advised Sheppard that if he did not deliver the wheat by the end of the delivery period, then Bunge would cancel the wheat contracts. JM&M failed to deliver the wheat by the close of business on July 31, 2007. On Aug. 1, 2007, consistent with the conversation with Sheppard, Bunge canceled the wheat contracts at the close of the market. The following day, Bunge mailed, via certified mail, a letter notifying JM&M of the cancellation. Sheppard signed the certified mail receipt on Aug. 14, 2007. The letter included an invoice for the fees owed for cancellation, along with the market difference.

In its written arbitration response, JM&M did not dispute the basic facts of the case or any of the conversations with Bunge's representatives.

The Decision

Both parties entered into binding hedge-to-arrive contracts; both parties signed the contracts; and the contracts specifically stated, "SUBJECT TO RULES OF NATIONAL GRAIN AND FEED ASSOCIATION."

Sheppard was advised that Bunge would not allow the JM&M contract to be rolled forward to a future delivery period. Sheppard also was advised that Bunge would cancel the JM&M contract if delivery was not made against the contracts prior to the close of business on July 31, 2007.

In its arguments, JM&M referred to weather-related conditions that arose in the fall of 2006 and spring of 2007 that affected JM&M's planting and crop yields, as well as simultaneously occurring family-related issues that JM&M said affected its focus on market prices. However, JM&M failed to notify Bunge of any

potential problems in fulfilling the contracts in a timely manner, and declined to cancel the contracts through the end of the delivery period. JM&M sought to declare *force majeure* because of production-related issues caused by a wet fall season and yields reduced by a late-season freeze.

But the arbitrators determined that *force majeure* did not apply under these circumstances, including because the contracts did not provide for a declaration of *force majeure* by the seller.

The arbitrators determined that with respect to contract number 109597, a total of 8,789 bushels had been delivered. But in the documentation provided, it appeared that JM&M was given only partial monetary credit for the deliveries applied against the contract. The gross amount for the deliveries would have totaled \$31,420.68, excluding any reasonable quality-related discounts on the grain.

The Award

For the reasons articulated previously, the arbitrators awarded damages based upon the following calculations: soybean market difference of \$284.13, plus the wheat market difference of \$65,094.78 for a total market difference of \$65,378.91, less the gross dollars owed for the wheat delivered, which was \$31,420.68. This calculation resulted in a total award of \$33,958.23 to Bunge.

Therefore, based upon the materials provided by the parties, the arbitrators awarded \$33,958.23 to the plaintiff, Bunge North America Inc. The arbitrators declined to award interest to Bunge, but did award Bunge its request for reimbursement of arbitration fees totaling \$997.84.

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

Kent Kupfner, Chair
Commodity Merchant
Columbia Grain International Inc.
Great Falls, Mont.

Kevin T. Walker
Manager
Heritage Grain Cooperative
Bethany, Ill.

Kayra S. Weisbrod
Grain Originator
StateLine Cooperative
Cylinder, Iowa