



National Grain and Feed Association Arbitration Decision

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August 27, 2009

CASE NUMBER 2232

Plaintiff: Keynes Bros. Inc., Circleville, Ohio

Defendant: Raymond Kelley, London, Ohio

STATEMENT OF THE CASE

On Jan. 30, 2006, Mr. Raymond Kelley (“Kelley”) entered into contract number C-1178 to sell 5,000 bushels of soft red winter wheat to Keynes Bros. Inc. (“Keynes”). This contract was a hedge-to-arrive contract with \$3.94 per bushel WN07 designated as the futures price. A second contract – number J-1455 – was entered into by the parties on July 14, 2006, for 2,500 bushels of soft red winter wheat. This was a flat price contract of WN07 @ \$4.54 per bushel and a basis of -0.50. The cash price for this second contract was \$4.04 per bushel. Kelley and Keynes signed both contracts and neither contested their validity. But Kelley failed to deliver the wheat.

Kelley stated that he contacted an agent for Keynes in the early fall of 2006 to notify Keynes that he had been unable to plant wheat because of abnormally large rainfall. Consequently, Kelley stated that he would have no wheat to deliver during the June 15-Aug. 31, 2007 delivery period set forth in both contracts. During that conversation, Kelley stated that he sought an agreement to “roll” the contracts to July 2008 futures for delivery in July-August 2008, in effect extending the contracts to the 2008 crop year. Keynes declined to roll the contracts. There was no written documentation provided to substantiate the conversation, as required by NGFA Grain Trade Rule 28(A). Nor was there documentation in the contracts allowing “prevented planting,” “crop failure” or an “Act of God” to excuse the party from delivering the grain.

Keynes claimed that it tried several times to contact Kelley to inquire about his failure to deliver the wheat, but maintained Kelley never responded. On Aug. 13, 2007, a registered letter from Keynes was mailed and received by Kelley stating that if delivery was not made by Aug. 31, 2007, the aforementioned contracts would be cancelled and cancellation charges and fees would be due. Keynes said Kelley did not respond, and the contracts were cancelled on Aug. 31.

On Sept. 4, a registered letter along with a copy of the cancelled contracts and charges were sent to Kelley by Keynes. Another attempt was made by Keynes on Sept. 12, to contact Kelley by registered mail; the notice of delivery contained the signature of a Becky Kelley. Kelley finally responded after a formal collection demand letter from Keynes’ legal counsel was sent.

In a final attempt to settle this matter prior to arbitration, Keynes’ attorney sent a letter requesting a reply within five business days to Kelley by special courier; Kelley personally signed for this letter. After the five-day time limit passed, Keynes filed this case and requested an arbitration award of \$25,725 for cancellation of contracts, plus interest on the unpaid balance starting on Sept. 1, 2007, and reimbursement of reasonable attorney fees and arbitration costs.

THE DECISION

Keynes met the requirements of NGFA Grain Trade Rule 3, which obliges parties to a contract to send a written confirmation. Keynes did this in a timely manner, and Kelley signed and returned the written confirmation of the oral contract. Therefore, Kelley cannot deny the existence of the wheat contracts.

Further, Keynes properly executed under NGFA Grain Trade Rule 28(A), which sets forth remedies if the seller is unable to complete its contract, by cancelling the defaulted portion of the contract at a fair market value, based upon the close of the market the next business day.

Acting upon Keynes's complaint, the NGFA prepared an arbitration services contract and submitted it to both Keynes and Kelley for execution. The arbitration services contract was signed and returned by each party. Kelley contended that the subject matter was under the jurisdiction of the state of Ohio; however, the contracts signed by both parties clearly stated that they were subject to NGFA arbitration of any disputes arising thereunder.

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

- Valid contracts for delivery of U.S. No.2 soft red winter wheat existed between Keynes and Kelley, with written confirmations signed by both parties.
- Kelley breached the contracts when he failed to deliver against the contracts as agreed.
- Although he readily admitted defaulting on the contracts, Kelley claimed that the amount sought by Keynes was excessive and should be reduced considerably. However, the arbitrators determined that Keynes exercised due diligence when it determined that the contract was in default by cancelling the defaulted portion of the contract at a fair market value, based upon the close of the market the next business day.

THE AWARD

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

Contract price as established July 14, 2007 on 2,500 bu. of cash wheat:	\$4.54 - .50	= \$4.04
Market valuation Aug. 31, 2007:		- \$7.08
Cash due Keynes on contract J-1455 (difference of \$4.04-\$7.08= \$3.04 x 2500 bu.):		\$ 7,600.00
Futures Price for HTA contract C-1178 5,000 bu. (Jan. 30, 2007)		= \$3.94
Contract rolled from July 2007 futures to September 2007 futures @		\$0 .15 carry
Market Valuation Aug. 31, 2007 for September 2007 futures:		= \$7.67
Cash due Keynes on C-1178 (difference of \$4.09-\$7.67 = \$3.58 x 5,000 bu.)		\$17,900.00
Cancellation fee on 7,500 bu. @ \$.05	- \$0.05	\$ 375.00
Recovery of Arbitration Fee		\$ 780.00
Total due		\$26,655.00

The arbitrators thereby awarded to Keynes \$26,655, plus interest on the judgment which shall accrue at the rate of 5.25 percent per annum from this date until paid in full.

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

Vickie L. Kennedy, Chair
President and General Manager
Lewis Commodities Inc.
(Subsidiary of Southern Plains Co-op)
Lewis, Kan.

Timothy A. Frump
Merchandising Manager
Consolidated Grain and Barge Co.
Naples, Ill.

Gary D. Holcomb
Grain Department Manager
Sunray Cooperative
Sunray, Texas