



National Grain and Feed Association

# Arbitration Decision

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September 9, 2010

## Arbitration Case Number 2297

**Plaintiff:** Riceland Foods, Inc., Stuttgart, Ark.

**Defendant:** Guenther Farming Company, Sherrill, Ark.

### Statement of the Case

On May 5, 2006, the defendant sold the plaintiff 10,000 bushels of U.S. No. 2, soft red winter wheat. The contract number was HA 367044. The delivery destination was stated as Stuttgart Grain Drier. The delivery period was June/July 2007. A futures price of \$4.28 per bushel was established, but no basis was stated. The contract was signed by both parties.

The dispute in this case had three issues. 1) The contract clearly stated a delivery destination of Stuttgart Grain Drier. However, the defendant claimed that was not a normal destination per past

practices between the parties. 2) The defendant questioned the stated destination and claimed that it could not deliver to the contracted destination without additional compensation. The plaintiff claimed to have a signed contract (by both parties) and was neither willing to make additional compensation for the contracted destination nor change the destination. 3) The defendant claimed it was relieved of its contractual obligation prior to the delivery period. The plaintiff stated the contract still was in effect and that it did not receive notice from the defendant that the defendant wanted to cancel the contract.

### The Decision

Contract HA 367044 clearly stated that Stuttgart Grain Drier was the delivery destination. The contract was entered on May 5, 2006. Based upon the evidence presented, the contract was signed by both parties and the defendant did not attempt to question the terms of the contract until October 20, 2006. The defendant signed the contract and failed to respond within 10 days (as required under the contract) in dispute of the contract terms. Therefore, pursuant to the terms of the contract and NGFA Grain Trade Rule 3(A) and (B), the defendant was obligated to perform and deliver under the terms of the contract. Past practices do not make for contractual terms; the contract itself rules.

At no time was there a written agreement to cancel the contract. The plaintiff acted per the terms of its contract. It was not under obligation to grant relief or excuse the defendant from the contract. The defendant assumed that the matter had been

resolved and the contract canceled. However, the defendant did not produce a written agreement of cancellation or show where the plaintiff accepted the terms of cancellation. NGFA Grain Trade Rule 4 states that both parties must agree to alter a contract and the alteration must be made in writing. The plaintiff never agreed, according to the facts presented in this case, as to cancellation. NGFA Grain Trade Rule 28 also states that the seller must give notice of failure to perform both verbally and in writing. The defendant made no written notice. Also, per the terms of the contract and NGFA Grain Trade Rules, the plaintiff was not obligated to excuse the defendant of contract performance. The defendant and plaintiff, per the contract, were to agree to cancellation terms, but no written agreement of cancellation was produced, except those by the plaintiff, per contract terms, at the time the defendant failed to perform on the contract.

## The Award

The cash award is based solely on futures. There was some confusion in documents presented as to cancelation calculations. However, based upon the contract, the fact that there was no basis stated, the arbitrators used futures values and related them to the appropriate delivery period.

### **Futures Only:**

Original	#367044	10,000	@	\$4.28	=	\$42,800.00
Buy Back		10,000	@	\$7.515	=	\$75,150.00
						\$32,350.00

### **5 Percent Default Penalty:**

#367044	\$42,800	*	5%	=	\$2,140.00
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**Total Due Riceland for Contract Default = \$34,490.00**

The arbitrators also awarded interest at a rate of 5 percent per annum pursuant to NGFA Arbitration Rule 8(m), to begin to accrue on the date of this decision until judgment is paid.

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

### **Bruce Sutherland, *Chair***

Vice President  
Michigan Agricultural Commodities Inc.  
Lansing, Mich.

### **Amy N. Brammer**

Business Development Manager  
Topflight Grain Cooperative  
Bement, Ill.

### **Casey Potter**

Grain Marketing Manager  
Farmers Cooperative Company  
Ames, Iowa