



National Grain and Feed Association

Arbitration Decision

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October 22, 2009

Arbitration Case Number 2313

Plaintiff: US Commodities LLC, Minneapolis, Minn.

Defendant: Sylte Farms, Benson, Minn.

Statement of the Case

This dispute involved a claim by US Commodities LLC (“USC”) against Sylte Farms (“Sylte”) alleging breach and failure to deliver on a contract for corn.

USC cancelled the disputed contract as a result of the alleged default by Sylte and USC sought to collect damages representing a difference in market prices, which it said totaled \$48,000.

In dispute was contract number 1967/13082, entered into on March 30, 2006 for 10,000 bushels of corn for October/Novem-

ber/December 2008 delivery. The same parties had entered into four other contracts, but those were not part of the dispute under this arbitration.

USC deemed Sylte to be in default on contract number 1967/13082 on June 30, 2008, when Sylte’s attorney advised USC that Sylte would not be performing on the contract. Sylte’s attorney asserted that Sylte had not entered into the contract since the contract confirmation was unsigned.

The Decision

The arbitrators closely examined the parties’ arguments, documents and audio recordings submitted in this case, including the confirmation of the contract in dispute. The arbitrators found that contract number 1967/13082 was a stand-alone contract and not associated with the Jan. 12, 2006 Northstar Commodities Managed Grain Program that had applied to various trades between the two parties in the past.

The arbitrators also determined that Sylte had sufficient knowledge and experience in the grain marketplace to be considered a “merchant.” Both parties in their arguments extensively discussed the question of whether Sylte was a “merchant” because it related to the binding nature of the unsigned contract

confirmation. Importantly, the arbitrators further noted a very recent court decision in Minnesota [*Glacial Plains Co-Op V Lindgren*, 759 N.W. 2d 661], in which the court found a farmer in circumstances similar to Sylte to be a “merchant.” In addition, the arbitrators concluded that Sylte’s acknowledgment of the existence and obligations under the contract were confirmed in discussions during a meeting between the parties, which Sylte recorded and submitted as evidence in the form of audio tapes to the arbitrators.

Based upon the aforementioned, the arbitrators found that Sylte was bound by the contract in dispute and USC was entitled to damages.

Calculation of Damages

The following is the calculation of damages determined by the arbitrators:

Contract Number 1967/13082

March 30, 2006: Original contract date
Ultra-Hedge
Confirmation dated March 1, 2007
Contract quantity 10,000 bu.
O/N/D 2008 Delivery
\$2.82 per bu. CZ08 Futures

June 27, 2008: Sylte's attorney notified USC that Sylte would not be performing, as Sylte was denying the existence of the contract. As a result, USC found Sylte to be in default on contract number 1967.

June 30, 2008: CBOT Dec 2008 corn contract closed limit-down.

July 1, 2008: Contract cancelled at \$7.52/bu. CZ08 Futures.

USC sought award of \$48,000 (*as detailed below*), as well as an additional \$500 in "administrative expenses".

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| Decision: | 10,000 bushels x \$4.70/bu. * = \$47,000 |
| | 10,000 bushels x \$0.05/bu. |
| | Marketing Fee = \$500 |

Total: = \$47,500

*Difference between \$2.82/bu. CN08 contracted futures versus \$7.52/bu. cancellation price on July 1, 2008.

The Award

Therefore, the arbitrators unanimously awarded US Commodities LLC damages on contract number 1967/13082 in the amount of **\$47,500**. However, the arbitrators declined to award the additional \$500 claimed by US Commodities as administrative expenses. The arbitrators further noted that US Commodities LLC did not request interest on this claim.

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

Sean G. Burke, Chair
General Counsel
CGB Enterprises Inc.
Mandeville, La.

Kent Prickett
General Manager
Farmers Grain Co.
Pond Creek, Okla.

Carrie Williams
Senior Merchandiser
AgMark LLC
Concordia, Kan.