



National Grain and Feed Association

Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

March 11, 2010

Arbitration Case Number 2329

Plaintiff: Archer-Daniels-Midland Co., d/b/a ADM Grain Co., Decatur, Ill.

Defendant: Thomas and Shannon Hinterman, Durant, Mich.

Statement of the Case

At issue in this case was whether Archer-Daniels-Midland Co., d/b/a ADM Grain Co. (“ADM”), properly cancelled its purchase contract with Thomas and Shannon Hinterman (the “Hintermans”), and whether Shannon Hinterman was a party to the contract.

By way of background, ADM and the Hintermans had “enjoyed a mutually prosperous relationship” for 20 years.¹ On Oct. 12, 2006, ADM and the Hintermans entered into a contract for the Hintermans’ sale of 140,000 bushels of U.S. No. 2 yellow corn to ADM, delivered Webberville, Mich., in January 2008 (the “Purchase Contract”).

Neither party contested: (1) the existence or validity of the Purchase Contract; (2) that the NGFA Grain Trade Rules governed the Purchase Contract; (3) that during the period of time between entering into the Purchase Contract and when performance was to have occurred, the price of U.S. No. 2 yellow corn nearly doubled; (4) that the Hintermans delivered 43,145.45 bushels under the Purchase Contract; (5) that 96,854.55 bushels were not delivered; (6) that the Hintermans sold the 96,854.55 bushels to a third party without first notifying ADM of its alleged default; (7) that in mid- to late-February 2008, ADM asked the Hintermans about delivery of the remaining bushels and the Hintermans made it clear that delivery would not be made; or (8) that the fair market value used by ADM in cancelling the contract was fair and reasonable.

The parties vehemently contested the reasons why the 96,854.55 bushels were not delivered, including different perspectives on the treatment of wet versus dry corn and whether the elevator

appropriately or inappropriately closed on certain days.

The arbitrators spent a great deal of time analyzing the information provided and the arguments made by each party with respect to why delivery was not completed. Ultimately, the following became clear to the arbitrators:

- ▶ both parties failed to keep the other party adequately informed about both what currently was happening with respect to deliveries and what needed to occur with respect to deliveries during the months of January and February 2008;
- ▶ each party was the victim of the other’s inadequate communication;
- ▶ if, by exercising due diligence, the Hintermans determined that ADM was in default of the contract, NGFA Grain Trade Rule 28(B) required that the Hintermans must first provide ADM with notice to complete the contract and then, if ADM still failed to complete the contract, the Hintermans were to proceed under one of the three options described in Rule 28(B); and
- ▶ if, by exercising due diligence, ADM determined that the Hintermans were in default of the contract, NGFA Grain Trade Rule 28(A) required that ADM must first provide the Hintermans with notice to complete the contract and then, if the Hintermans still failed to complete the contract, ADM was to proceed under one of the three options described in Rule 28(A).

¹ The Hintermans’ First Argument, Introduction, page 1.

The Decision

While the Hintermans claimed they determined that ADM was in default of the contract, the arbitrators determined that the Hintermans failed to notify ADM of that fact, much less to follow any of the options described in NGFA Grain Trade Rule 28(B). By contrast, ADM did inquire as to whether the Hintermans would complete the contract and, upon learning that the Hintermans would not be completing the contract, ADM cancelled the defaulted portion of the contract at fair market value. Since the Purchase Contract was governed by the NGFA Grain Trade Rules, and ADM complied with the NGFA Grain Trade Rules while the Hintermans did not, the arbitrators were compelled to find for ADM.

With regard to whether Shannon Hinterman was a party to the Purchase Contract, both Thomas and Shannon Hinterman were jointly shown as the seller on the confirmation for the Purchase Contract. Thomas and Shannon Hinterman similarly were jointly shown on all 2007 and 2008 contracts with ADM, as well as on all checks issued by ADM to the Hintermans. The Hintermans never objected to Shannon being a party to the Purchase Contract. Based upon the length of the relationship between ADM and both Thomas and Shannon Hinterman, and the fact that no request to remove Shannon Hinterman ever had been received and no objection to including Shannon Hinterman ever had been raised, the arbitrators believed that ADM had every reason to believe she was a party to the Purchase Contract.

The Award

The arbitrators award \$218,164.87 to ADM without interest or arbitration fees. The arbitrators further find that both Thomas and Shannon Hinterman were parties to the Purchase Contract and were responsible for all liabilities arising under it.

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.