



National Grain and Feed Association

Arbitration Decision

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February 24, 2011

Arbitration Case Numbers 2370 and 2483

Plaintiff: Quality Technology International Inc., Elgin, Ill.

Defendant: Badger State Ethanol LLC, Monroe, Wis.

Statement of the Case

This arbitration case was brought forward by Quality Technology International Inc. (QTI) against Badger State Ethanol (Badger State) for alleged loss of commissions earned and revenues on future sales, as well as agreed-upon marketing fees, associated with the market development of three new and distinct products that would be by-products produced by a patented technology, owned by QTI, called "HydroMilling." HydroMilling is a wet milling corn fractionation process.

Brief History: In 2005, QTI and a consortium of companies agreed to sell this new technology of corn processing, called HydroMilling, to Badger State. After an initial investment of about \$25 million, Badger State had contracted to build the HydroMilling plant. In subsequent periods, before bringing the plant to the operational stage, Badger State signed contracts with QTI to market and sell the three products produced by the HydroMilling plant, which are corn germ, fiber and protein.

Badger State said that after trying for two years following start up to have the plant perform as contracted, as well as an additional investment exceeding \$8 million, it discontinued trying to use the HydroMilling technology and reverted instead to using a type of conventional corn processing for a dry ethanol plant.

QTI sought \$10,061,581.47 in damages, comprised of marketing fees and commissions it said it would have realized had Badger State produced the products envisioned by the marketing agreements for a term of five years. QTI also requested compensation for legal fees incurred in pursuing the arbitration case.

Badger State sought reimbursement of its marketing development fees amounting to \$354,166 paid to QTI, saying the marketing effort made by QTI did not warrant compensation. Badger State also requested reimbursement of its legal fees.

The Decision

The arbitrators ruled that the HydroMilling technology purchased by Badger State from QTI was flawed and unable to produce at contract specifications the corn products described in the marketing agreements Badger State had signed. The panel found that the HydroMilling technology was purchased

by Badger State, with the implicit understanding that all three products would be produced by the hydromill to contract specifications described by the agreements set forth in the contracts between QTI and BSE.

The Award

Based upon this finding, the panel ruled that since all three products could not be produced by the plant simultaneously, producing one product, for any one of the three QTI contracts, while being unable to produce the other two corn products to contract specification was impracticable. The panel ruled that QTI did market development work for these corn products described in the contracts and Badger State willingly paid QTI \$250,000 for this marketing work. However, the panel ruled that the \$104,166 withheld from a corn germ settlement check must be reimbursed to Badger State, as it had not agreed to that withheld amount. The panel also ruled that each party of the dispute pay its own legal fees.

SUBMITTED WITH THE UNANIMOUS CONSENT OF THE ARBITRATORS, WHOSE NAMES APPEAR BELOW:

Mike Meyers, *Chair*

Director of Wheat By-Products

APEX

Hamburg, N.Y.

Alan D. Brewer

Vice President, North American Health & Nutrition

Evonik Degussa Corp.

Kennesaw, Ga.

John Skelley

Pinal Energy LLC

Maricopa, Ariz.