



National Grain and Feed Association

Arbitration Decision

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August 12, 2010

Arbitration Case Number 2372

Plaintiff: Columbia Grain International, Inc., Clarkston, Wash.

Defendant: Keith and Heidi Kopf, d/b/a Kopf Farms, Inc., Pullman, Wash.

Statement of the Case

This case concerned whether Keith and Heidi Kopf, d/b/a Kopf Farms Inc. (“Kopf Farms”) and Columbia Grain International, Inc. (“Columbia Grain”) on Sept. 5, 2006 entered into a contractual agreement (contract number P-10035996) for the delivery of 5,000 bushels of Hard Red Winter Wheat.

The specified delivery period was between Aug. 1, 2007 and Sept. 30, 2007. The contract was priced at \$4.79 per bushel KCBOT futures with a +0.35 basis, totaling a \$5.14 flat price.

Columbia Grain alleged that Kopf Farms failed to perform on the contract, and assessed damages of \$30,947.50 for cancellation costs and attorney fees. Kopf Farms denied that the parties entered into the agreement. Also in its defense, Kopf Farms presented arguments alleging that Columbia Grain “switched” the contracting documentation between what it provided in the initial law suit in state court and in its arguments in this arbitration proceeding.

The Decision

Columbia Grain acknowledged that it provided an incorrect boilerplate document in court, but claimed it was an inadvertent clerical mistake that it subsequently corrected in court upon identifying the error. Columbia Grain stated that the boilerplate provided in the arbitration case was correct. Columbia Grain further explained that another discrepancy between the documents was in appearance only, and resulted from how the documents were reprinted from its computer system or photocopied from the original; but it maintained that the documents themselves otherwise were identical.

Kopf Farms raised various arguments based upon the alleged differences between the two sets of documents, including that NGFA lacked jurisdiction over this dispute. At one point during the arbitration, Kopf Farms stated that it would seek relief from the court on these questions, and NGFA confirmed that it would comply with any court order staying the arbitration. Kopf Farms stated that it filed a motion with the court in April 2009, but nothing was provided indicating that the court ever provided

any remedy requested by Kopf Farms. Thus, the arbitrators concluded that jurisdiction remained with NGFA, and further determined that the arguments based upon the differences between the documents were inconsequential.

Kopf Farms also referred to an “Act of God” provision in the contract that it said should have been triggered by a fire at Kopf Farms’ storage facility. However, the arbitrators noted that this provision as specifically written did not apply as a defense for the seller.

Kopf Farms disputed the validity of the contract because it did not sign and return the contract confirmation. After close review, the arbitrators deemed it was customary under the business relationship between Columbia Grain and Kopf Farms that it did not sign most contracts, but that performance always occurred within the appropriate terms and conditions of the trade. This also was confirmed by futures transaction records and emails provided by Columbia Grain.

On Oct. 1, 2007, the first business day following the contracted delivery period, Columbia Grain initiated a verbal conversation with Kopf Farms. During this call both parties were made aware that Kopf Farms was not going to perform on the contract.

It was the arbitrators' assessment that, upon discovering that Kopf Farms was in contract default on Oct. 1, 2007 (the end of the contractual delivery period), Columbia Grain should have exercised reasonable due diligence to mitigate the contract risk and equity at that time. Specifically, the arbitrators determined that Columbia Grain should have exercised its right to mitigate damages and close out the purchase contract at fair market value on Oct. 1, 2007 in accordance with NGFA Trade Rule 28(A) [Seller's Non Performance], which states in paragraph (3) that, once the buyer has notified the seller that he will not perform, the buyer must at once, "*cancel the defaulted portion of the contract at fair market value based on the close of the*

market the next business day."

Therefore, the arbitrators determined that the calculation of damages involved in this dispute should not reflect the fact that Columbia Grain chose to wait until Jan. 17, 2008 to mitigate such damages. After reviewing multiple sources of market information regarding the Hard Red Winter Wheat market, it was determined that delivered August and September basis was \$9.49 KCBOT and +.30 basis.

The arbitrators concluded that Columbia Grain and Kopf Farms did, in fact, enter into a binding verbal contract on Sept. 5, 2006 that subsequently was confirmed in writing, but not signed. The arbitrators also concluded that Columbia Grain did not execute reasonable due diligence upon discovering the intent of Kopf Farms to default on the sales contract.

The Award

The arbitrators awarded the following damages to Columbia Grain:

1. Columbia Grain was awarded judgment against Kopf Farms for \$23,250.
2. Columbia Grain was awarded the specified legal fees and costs of \$1,947.50, plus interest at a rate of 4 percent per annum, pursuant to Arbitration Rule 8(m), from the date of this decision until the award is paid in full.

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

Cameron Gregg, Chair

Vice President of the Western Trade Group
Interstate Commodities Inc.
Omaha, Neb.

Mark Heil

General Manager
Prairie Central Cooperative Inc.
Chenoa, Ill.

Gerald McAfee

Marketing Specialist
West Central Cooperative
Ralston, Iowa