



National Grain and Feed Association

Arbitration Decision

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September 8, 2011

Arbitration Case Number 2376

Plaintiff: Bunge North America Inc., St. Louis, Mo.

Defendant: Harold Wheeler, Carrollton, Miss.

Statement of the Case

This case involved a dispute over the validity and enforceability of soybean contract numbers 189031 and 192267 for delivery to Bunge's facility in Marks, Miss.

The parties entered into contract number 189031 for 20,000 bushels of soybeans on Jan. 18, 2007 at a flat price of \$7.37 per bushel. They also entered into contract number 192267 on May 21, 2007 for 10,000 bushels of soybeans at a flat price of \$8 per bushel. Both contracts were written as flat-priced purchase contracts for delivery between Sept. 1 and Oct. 31, 2007.

Bunge confirmed both contracts by issuing timely purchase confirmations by mail. The confirmation for contract number 189031 was signed by Harold Wheeler on Jan. 18, 2007, and returned to Bunge. The confirmation for contract number 192267 was not returned to Bunge.

As of Oct. 23, 2007, Bunge alleged that Wheeler had not delivered any soybeans to Bunge in fulfillment of either contract. Bunge's grain merchandiser stated that he tried to contact both Harold and Lawyer Wheeler via phone to discuss when they would begin delivery. (Harold Wheeler appears to be the managing partner of a farm which seems to be a sort of family partnership or corporation. Lawyer Wheeler is the farm manager). Bunge's grain merchandiser said neither Harold nor Lawyer Wheeler returned his calls. On Oct. 23, Bunge prepared an amendment to both contracts wherein it proposed to extend the delivery period to Nov. 30, 2007. Bunge mailed two Confirmations of Purchase Contract (Amended) to Wheeler. Wheeler did not sign and return the Confirmation of the Purchase Contract (Amended) or contact Bunge disputing the amendments.

Further, in the statement made by Bunge's grain merchandiser, during November 2007, he tried to contact both Harold and Law-

yer Wheeler several times to discuss the soybean contracts. In mid-November, Bunge's merchandiser was able to contact Harold Wheeler, and when asked when he was going to begin delivering to satisfy the soybean contract, Wheeler allegedly replied "*I will get back to you.*" Bunge stated that Wheeler did not follow up by contacting Bunge, so on Dec. 3, 2007 (after the extended delivered period ended), Bunge canceled the contracts at the close of the market. On Dec. 3, 2007, the cash price for soybeans being paid by Bunge was \$10.70 per bushel, which was within the range of the cash price for soybeans in the area that day. On that same day, Bunge sent Wheeler (via certified mail) an invoice for the market difference and cancellation fees owed for the cancellation of the two soybean contracts. Bunge's claim for the market difference and cancellation fees was \$96,600.

In his response to the filing of this case, Harold Wheeler did not dispute that Bunge purchased 20,000 bushels of soybeans at \$7.37 per bushel on Bunge contract number 189031. He stated that the contract required delivery to be completed by Sept. 30 – not between Sept. 1 and Oct. 30, 2007 as Bunge had claimed. [Note: The arbitrators subsequently decided that this minor discrepancy was immaterial to the complaint.] Harold Wheeler did dispute the second Bunge purchase contract (number 192267, dated May 21, 2007, at a price of \$8 per bushel). In Harold Wheeler's Statement of Facts responding to the Bunge complaint, Wheeler stated "On May 21, 2007, my brother purchased a second soybean contract in my name... I refused to sign this contract, because I didn't give my consent."

In a letter dated July 15, 2009 to NGFA's National Secretary from Lawyer Wheeler, which was submitted as an exhibit by Bunge, Lawyer Wheeler explained that he was the farm manager for Harold Wheeler, Valencia M. Wheeler, Hiawatha Wheeler Martin and himself. Under that authority, he stated "*I am usually the person*

who calls and orders the grain contracts.” He further stated that “Harold Wheeler acts as managing partner, and usually makes most of the decisions related to planting.”

Harold Wheeler argued that on Oct. 10, 2007, he instructed his brother, Lawyer, to call Bunge’s main office in Greenville, Miss., and tell Bunge to cancel all of Wheeler’s soybean contracts, as he realized that because of dry weather, they would not be able to deliver the contracted bushels. Bunge maintained it had no record of this phone call, and therefore continued to keep the contracts open and in force. There was no record of any follow-up on this call from Wheeler. Wheeler also stated that because he had no record of the contract amendments, they were not valid or enforceable. He also argued that the original purchase confirmation was invalid, since

it was based upon an oral contract not made personally by Harold Wheeler but by a third party, Lawyer Wheeler. Harold Wheeler also argued that Bunge had no authority to amend purchase contract number 189031 to extend the delivery period without discussing it with him in advance, and that the contracts should have been canceled.

In his rebuttal, Harold Wheeler also raised several complaints and assertions about the way Bunge was doing business, including the time and manner of payment on wheat contracts and that Bunge was unwilling to roll the contract to next year as other grain buyers in the area allegedly offered. [Note: The arbitrators did not believe any of these alleged concerns had a material difference as to the facts of this case.]

The Decision

The arbitrators thoroughly reviewed the arguments and documents submitted by both parties. The arbitrators found that contract numbers 189031 and 192267 were valid and enforceable. NGFA Grain Trade Rule 3(A) requires that written confirmation be issued no later than the close of the business day following the date of the oral agreement. This was easily verified for confirmation number 189031, as it was signed by Harold Wheeler.

Concerning Purchase Confirmation number 192267, Harold Wheeler stated that the contract was not valid because “my brother purchased a second soybean contract in my name... I refused to sign this contract, because I didn’t give my consent.” The confirmation was not returned by Harold Wheeler. However, Harold Wheeler did not dispute the fact that Lawyer Wheeler contacted Bunge and sold soybeans on May 21, 2007. Lawyer Wheeler, in his statement, said that he normally sold grain for this family farming entity. Bunge had a history of dealing with Lawyer Wheeler and had every reason to believe that he had authority to do the same in this instance. Further, Harold Wheeler did not contact Bunge disagreeing with the confirmation he received. NGFA Grain Trade Rule 3(B), applicable to this situation, states that if either the buyer

or seller fails to send a confirmation, the confirmation sent by the other party is binding upon both parties, unless the confirming party is notified immediately by the non-confirming party of any disagreement with the confirmation received.

In addition, the arbitrators rejected Wheeler’s assertion that Bunge had no authority to amend purchase contract number 189031 to extend the delivery period without discussing it with him in advance and should instead have canceled the contract.

Bunge’s amendments to contract numbers 189031 and 192267 and subsequent cancellations were handled in accordance with NGFA Grain Trade Rule 28 [Failure to Perform]. The arbitrators determined that Bunge exercised due diligence in attempting to contact Harold Wheeler to remedy the seller’s non-performance on his contracts. Because Bunge was unable to establish contact with Wheeler, it first extended both contracts and again, because it was unable to establish contact with Wheeler through the extension period, it canceled the defaulted portion of the contract at fair market value based upon the close of the market the next business day.

The Award

The arbitrators awarded the plaintiff, Bunge North America, Inc., the difference of the contracted cash price and the market price. No cancellation fees were awarded. The awarded amount was \$93,600, plus interest calculated at 4 percent per annum pursuant to NGFA Arbitration Rule 8(m), accruing from the date of this decision until judgment is paid in full.

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

Dan Treinen, Chair
Vice President
Columbia Grain International, Inc.
Great Falls, Mont.

Doug Biswell
Merchandiser
Farmers Cooperative Association
Manhattan, Kan.

Dan Wegner
Commodities Manager
United Wisconsin Grain Producers LLC
Friesland, Wis.