



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

July 29, 2010

## Arbitration Case Number 2427

**Plaintiff: FGDI LLC, Bowling Green, Ohio**

**Defendant: Jon Reese, Peru, Ind.**

### Statement of the Case

This arbitration case involved a claim by FGDI LLC (FGDI), the buyer, against Jon Reese (Reese), the seller, regarding the cancellation of three cash grain contracts.

FGDI and Reese entered into three corn contracts in early 2006 for delivery to FGDI's Rich Valley, Ind., facility in January 2007. Neither party disputed the existence of these contracts, which totaled 6,000 bushels of corn.

Contract Date	Contract Number	Bushels	Delivery	Futures	Basis	Cash Price (\$/bu.)
2/3/2006	61744	2,500	Jan 07	\$2.70CH	-0.30	\$2.40
2/14/2006	61764	1,500	Jan 07	\$2.63CH	-0.30	\$2.33
4/13/2006	61913	2,000	Jan 07	\$2.77CH	-0.30	\$2.47

According to FGDI, it contacted Reese in February 2007 because he had not delivered corn in satisfaction of these contracts, and Reese stated he already had sold his corn at a higher price. FGDI claimed that Reese asked FGDI if it could work with him on these contracts. FGDI then allegedly agreed to roll these three contracts out to January 2008 delivery at the original contract prices. In March of 2007, according to FGDI, all three

contracts were rolled forward to January 2008 delivery. January 2008 passed, and Reese again did not deliver corn to FGDI.

FGDI contacted Reese on March 14, 2008 regarding non-delivery of the contracted corn. Reese agreed upon looking at his records that he had three corn contracts for January 2007 delivery that he never had delivered upon. However, Reese argued that he never had agreed with FGDI to roll the January 2007 contracts to January 2008, and maintained that if he had been informed of non-delivery on these contracts in February 2007, he would have had corn available to deliver in fulfillment of these contracts. Reese maintained that he simply had forgotten about the existence of these contracts.

FGDI and Reese met on Aug. 14, 2008 to try to reach agreement on the three contracts in question. FGDI and Reese agreed to cancel the contracts using Feb. 1, 2007 as the cancellation date, since the original contract delivery period was for January 2007. FGDI calculated damages of \$11,956.26 for price differential, cancellation costs, and interest. Reese wrote a check for the damages, but then later stopped payment on the check, saying that there had been a breach of contract by both parties on the original contracts and that, therefore, the contracts should be void with no money owed.

## The Decision

The arbitrators concluded that FGDI and Reese were correct in disregarding the contract roll from January 2007 to January 2008 when they were trying to reach a settlement. This is supported by NGFA Grain Trade Rule 4 [Alteration of Contract], which states: *“The specifications of a contract cannot be altered or amended without the express consent of both the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by both in writing.”* The arbitrators concluded that neither party presented evidence of a mutual agreement to roll contracts forward from January 2007 to January 2008.

The arbitrators did find that the original contracts still were valid and in effect, and as such, according to NGFA Grain Trade Rule 28(A) [Failure to Perform – Seller’s Non-Performance], the buyer was authorized to cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day. The proper cancellation date for these three contracts should have been Feb. 1, 2007, the date that the undelivered contracts were

in default. FGDI requested damages of \$11,956.26, plus interest from Aug. 14, 2008, the date both parties agreed to cancel the contracts. However, FGDI did not present any evidence to show how it arrived at the requested amount of damages.

In the absence of such information, the arbitrators used the futures prices from the original contracts and the futures price on Feb. 1, 2007 to calculate the price differential as listed below. Futures price on Feb. 1, 2007, the day after default on the disputed contracts, was \$3.98 CH.

Contract Number	Bushels	Contract Futures	Feb. 1, 2007 Futures	Loss per bu.	Total loss on contract
61744	2,500	\$2.70	\$3.98	\$1.28	\$3,200
61764	1,500	\$2.63	\$3.98	\$1.35	\$2,025
61913	2,000	\$2.77	\$3.98	\$1.21	<u>\$2,420</u>
				Total loss on Futures:	<u><b>\$7,645</b></u>

## The Award

Therefore, in the absence of documentation supporting FGDI’s original claim of loss of \$11,956.26, the arbitrators unanimously decided to award to FGDI damages of \$7,645, plus interest, which shall accrue at a rate of 3.25 percent per annum from Aug. 14, 2008 until paid.

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

**Richard L. Anderson**, *Chair*  
 Grain Merchandiser  
 Ag Partners Co-op  
 Goodhue, Minn.

**Morey Cade**  
 Director of Marketing and Operations  
 West Plains Company  
 Kansas City, Mo.

**Michele Ohnemus**  
 Grain Merchandiser  
 MFA Incorporated  
 Columbia, Mo.