



National Grain and Feed Association

# Arbitration Decision

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## Arbitration Case Number 2445

**Plaintiff: W.B. Johnston Grain Co., Enid, Okla.**

**Defendant: Jeff Parsons, A&A Farms, Shutte Partnership and Robert Parsons, Anthony, Kan.**

### Statement of the Case

This case concerned a dispute over whether contracts existed for delivery of hard red winter (HRW) wheat between W. B. Johnston Grain Co. (“WBJ”) and Jeff Parsons, Robert Parsons, Shutte Partnership, and A & A Farms (collectively, “Parsons”). Jeff Parsons was the authorized agent to act upon behalf of the defendants.

Parsons entered into a first set of cash contracts with WBJ for the sale and delivery of HRW wheat in the summer of 2007. Parsons received and signed all of the 2007 contracts, and, therefore, thought that this act made the contracts binding upon both parties.

Parsons said that because of inclement weather during the 2007 season, it did not produce sufficient quantities of wheat to meet its 2007-crop contractual obligations with WBJ. In response, WBJ allowed Parsons to buy in the shortfall bushels at fair market value and charged this price difference to Parsons’ account. Partial payment was made by Parsons against these outstanding charges arising from the 2007-crop HRW wheat contracts.

WBJ alleged that in 2007 and 2008, it entered into a second set of contracts with Parsons, which included six cash and six options contracts, calling for delivery of hard red winter HRW wheat to WBJ facilities in June through July 2008. All of the contracts called for NGFA Trade Rules to govern. In April 2008, WBJ stated that Parsons directed that the six options contracts be converted to cash contracts.

However, Parsons claimed that it had not entered into, nor agreed to, any of the contracts with WBJ for 2008 delivery because, unlike the 2007 contracts, none of the 2008 contracts were signed by Parsons. WBJ stated that all of the contracts were mailed to Parsons; but Parsons claimed it never received any of the mailings, and that, therefore, it could not have signed

any of the 2008-crop year contracts to make them binding upon the parties. Robert Parsons further stated in his affidavit that, *“I am not a commercial farmer, but instead raise wheat on land that I personally own or lease. I am not a grain dealer or merchant and have no specialized knowledge in buying or selling wheat or other grains. I occasionally contract to sell my crops so that I can get the best price to the advantage of myself and my family.”*

The dispute between the parties arose in July 2008, when WBJ alleged that Parsons informed it that no wheat would be delivered against the alleged 2008 contracts. WBJ then cancelled the alleged contracts at fair market value.

Given this discrepancy, the arbitrators concluded that they needed to determine if there was a meeting of the minds and whether contracts existed for the sale of wheat by Parsons to WBJ for the 2008 crop year.

WBJ claimed damages of \$217,975 arising from its buy-in of the twelve 2008-crop wheat contracts with Parsons. Parsons, in turn, claimed that WBJ was owed nothing because it maintained contracts did not exist.

WBJ filed suit against Parsons in the U.S. District Court for the Western District of Oklahoma for recovery of damages. Parsons responded by asking the court to stay the proceedings because the alleged contracts *“contain valid and binding arbitration clauses.”* The court, in June 2009, granted Parsons’ request and ordered that, *“All proceedings in this matter are STAYED and the matter is referred to the arbitration proceedings already initiated before the National Grain and Feed Association, to be decided under the National Grain and Feed Association Trade Rules.”*

## The Decision

The arbitrators noted that NGFA Arbitration Rules Section 3(a) states, in relevant part: “***The National Grain and Feed Association (NGFA) may properly consider a case involving a dispute between or among any of the following: ... (2) Active members of the National and nonmembers, by consent of both parties or by court order.***” Since binding arbitration was ordered by the federal district court, this case must be decided by an NGFA Arbitration committee.

Parsons claimed that it was not a merchant under Title 1, Section 204(1) of the Oklahoma Annotated Statutes (defined as “a person who deals in goods of any kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction.....”) and if Parsons was not a merchant, a contract would only be binding upon both parties if signed by both. Parsons’ previous business practices demonstrated that it entered into forward cash sales of the 2007 HRW wheat crop to lock in prices when deemed favorable, which in turn demonstrated Parsons’ knowledge of the business. Parsons also previously entered into options strategies with WBJ that later were converted into cash contracts. Parsons stated that its practice was to “*call and speak with [WBJ] about selling my crops... After we talked about the terms of the contract, [WBJ] would send a written contract confirmation to me, I would sign the same and send it back....*” Parsons’ previous marketing practices confirmed that it was well versed in the markets and elected to use marketing tools that required an above-average understanding of the markets.

Parsons stated that WBJ would not allow it to enter into 2008 crop year contracts with WBJ until the 2007 crop year contracts were settled. WBJ affirmed that Parsons was in fact told that, but according to WBJ Parsons then made a payment arrangement with WBJ to settle those contracts, and as a result of this payment arrangement, Parsons was allowed to enter into 2008 crop year contracts with WBJ. No documentation of the payment arrangement was provided to the arbitrators and therefore it cannot be confirmed or denied.

NGFA Grain Trade Rule 1 states that, “***Both the Buyer and the Seller shall include in their original articles of trade, whether entered into orally or in writing....***” Whether a confirmation is signed is not the controlling factor in determining whether a meeting of the minds and a trade between the parties has occurred. Rather, the confirmation details specifications of the trade that has been agreed upon orally between the parties. Grain

Trade Rule 3(A) is very specific in stating, in relevant part, that “***Both the Buyer and Seller shall send a written confirmation, each to the other, not later than the close of the business day following the date of trade, or an agreed amendment, setting forth the specifications as agreed upon....***” The arbitrators concluded that since Parsons did not provide any documents that it in fact did send a confirmation of the contracts that the confirmation sent by WBJ prevailed under Grain Trade Rule 3(B), which states, in relevant part, that “***the confirmation sent by the other party will be binding upon both parties, unless the confirming party has been immediately notified by the non-confirming party, as described in Rule 3(A), of any disagreement with the confirmation received.***”

The arbitrators reasoned that 2008-crop HRW wheat contracts had been entered into between WBJ and Parsons. The arbitrators based this determination upon Parsons’ past business practices, which were to enter into verbal contracts with WBJ. The arbitrators made this finding despite Parsons’ assertion that no contracts existed between the parties. Further, there was no evidence that WBJ had received a conflicting confirmation from Parsons. In addition, the arbitrators determined that common sense would dictate that WBJ had nothing to gain in entering into “phantom” contracts with Parsons, given that wheat market prices could have declined, in which case WBJ would have owed monies to Parsons. Parsons’ claim that it never received the contracts and the contracts therefore were not valid until it signed them would give complete advantage to Parsons. Specifically, had market prices increased after contracting, Parsons could have claimed that no contract existed. Conversely, had market prices declined, Parsons could have then signed the contracts and claimed they existed.

Having reached this decision that the contracts did, in fact, exist, the arbitrators next turned to an assessment of damages. Parsons informed WBJ on July 3, 2008 that no wheat would be delivered to fulfill the 2008-crop contracts. WBJ cancelled the contracts on that date. The arbitrators noted that WBJ asked to be awarded 20-cent-per-bushel cancellation fees on the 2008 crop contracts. When WBJ cancelled contracts with Parsons for the production shortfall the previous crop year, WBJ assessed 10-cent-per-bushel cancellation fees. WBJ did not present documentation to the arbitrators that Parsons had been notified of a change in cancellation fees from the previous year. Therefore, the arbitrators determined that Parsons should have expected 10-cent-per-bushel cancellation fees based upon past dealings between the parties.

The contracts, delivery periods and prices are detailed below.

Contract Number	Contract Date	Delivery Period	Undelivered Bushels	Contract Price	Fee	Cancellation Price	Dollar Amount
1005485	9/5/2007	June/July 2008	10,000.00	\$ 6.09	\$ 0.10	\$ 8.77	\$ 27,800.00
1005486	9/5/2007	June/July 2008	10,000.00	6.09	0.10	8.77	27,800.00
1005498	9/10/2007	June/July 2008	5,000.00	5.74	0.10	8.77	15,650.00
1005512	9/21/2007	June/July 2008	5,000.00	6.06	0.10	8.77	14,050.00
1005513	9/21/2007	June/July 2008	10,000.00	6.06	0.10	8.77	28,100.00
1005519	9/26/2007	June/July 2008	2,500.00	6.28	0.10	8.77	6,475.00
3160							
1005728	9/28/2007	June/July 2008	10,000.00	7.30	0.46	8.77	19,300.00
3161							
1005729	9/28/2007	June/July 2008	20,000.00	7.30	0.46	8.77	38,600.00
3163							
1005730	10/5/2007	June/July 2008	5,000.00	7.30	0.47	8.77	9,700.00
3167							
1005732	10/23/2007	June/July 2008	5,000.00	7.20	0.39	8.77	9,800.00
3174							
1005733	11/20/2007	June/July 2008	5,000.00	7.60	0.49	8.77	8,300.00
3179							
1005739	11/30/2007	June/July 2008	5,000.00	8.30	0.16	8.77	3,150.00
							\$ 208,725.00

Contracts numbered 3160, 3161, 3163, 3167, 3174 and 3179 were minimum/maximum contracts that were priced and con-

verted to the corresponding purchase contract. These contracts had option premiums and service fees that were added to the contract cancellation fees detailed above.

## The Award

Based upon the information provided to the arbitrators, W.B. Johnston Grain Co. was awarded judgment against Jeff Parsons, Robert Parsons, Shutte Partnership and A & A Farms for damages of \$208,725.

Interest on the judgment also was awarded at a rate of 3.25 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:

**Jay Mathews**, *Chair*  
 Grain Marketing Manager  
 Midwest Grain LLC  
 Bloomington, Ill.

**David Fiebiger**  
 Manager  
 Finley Farmers Grain & Elevator Co.  
 Finley, N.D.

**Bart Moseman**  
 Grain Division Manager  
 Farmers Cooperative Elevator Co.  
 Hemingford, Neb.