



National Grain and Feed Association

# Arbitration Decision

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December 2, 2010

## Arbitration Case Number 2446

**Plaintiff: Integrated Grain & Milling, Fresno, Calif.**

**Defendant: Lima Brothers Dairy, Merced, Calif.**

### Statement of the Case

On Aug. 4, 2008, Integrated Grain & Milling (IGM) and Lima Brothers Dairy (Lima Bros.) entered into a contract for 900 tons of rolled corn for shipment by IGM to Lima Bros. beginning Oct. 1, 2008 through March 31, 2009, at a rate of 150 tons per month. IGM initiated the written sales contract confirmation for 900 tons on Sept. 16, 2008, which Lima Bros. signed and returned on Oct. 9, 2008. Payment terms were not specified in the contract.

Since this was the first trade between the two parties, Lima Bros. was asked to complete a credit application, which it submitted on Sept. 23, 2008. IGM reviewed the credit information on Oct. 10, 2008 and established "cash-in-advance" terms. Lima Bros. stated that the custom of the trade for payment terms was net 30 days after receipt of the grain and invoice.

Lima Bros. provided additional credit information to IGM on Oct. 29, 2008. On Nov. 13, 2008, IGM reconsidered the terms and offered "one-load-at-a-time" terms. Lima Bros. indicated

that when it submitted the credit application, the terms on the application indicated 14 days net cash with 1.5 percent per month service fees for late payment.

IGM alleged that it issued repeated requests to make the scheduled shipments, which Lima Bros. refused. Lima Brothers countered that it did not refuse to take deliveries, but did refuse to pay in advance.

On March 3, 2009, IGM sent a certified letter to Lima Bros. putting it on notice that unless IGM received a written delivery schedule and Lima Bros. complied with the payment terms, that IGM would consider Lima Bros. in default and would cancel the contract based upon current market values, in accordance with NGFA Feed Trade Rule 19(B) [Default by the Buyer]. The estimated contract value at the time was \$74,250.

On May 20, 2009, IGM submitted the dispute with Lima Bros. to NGFA arbitration.

### The Decision

Given the information that was submitted to the arbitrators, the arbitrators determined that NGFA Feed Trade Rule 1 [Trade] was the pertinent rule to apply to this dispute.

Feed Trade Rule 1 details the articles of trade. One of the articles of trade is (F) [Terms of Payment]. Although IGM had sent a contract to Lima Bros. that Lima Bros. had signed, the contract did not include such payment terms.

Given that the two parties had not traded with each other previ-

ously, a request was made by IGM for a credit application to be filled out by Lima Bros., with which Lima Bros. complied. IGM did not accept the original credit terms offered by Lima Brothers and asked for additional credit information, which it again supplied to IGM, at which time IGM offered "one-load" terms.

The arbitrators determined that even though a contract was made and signed, neither party agreed on the payment terms. Therefore, the contract was incomplete and could not be executed.

## **The Award**

Given that the arbitrators determined a contract had not been executed, there would be no award to IGM, the plaintiff.

The arbitrators determined that each party was responsible for paying its own expenses associated with this proceeding.

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

**John Ade, Chair**

Vice President, Grain Sales & Merchandising  
Perdue Grain & Oilseed LLC  
Salisbury, Md.

**Ben Baer III**

President  
Livestock Nutrition Center  
Memphis, Tenn.

**Wendy Scarff**

Merchandising Manager  
TriOak Foods Inc.  
West Burlington, Iowa