



National Grain and Feed Association

Arbitration Decision

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April 4, 2013

Arbitration Case Number 2496

Plaintiff: Grain Millers Inc., Eden Prairie, Minn.

Defendant: Rowland Seeds Inc., Taber, Alberta, Canada

Statement of the Case

The plaintiff, Grain Millers Inc. (GMI), submitted an arbitration complaint to the National Grain and Feed Association (NGFA) alleging that the defendant, Rowland Seeds Inc. (Rowland), failed to perform on contract number 8097, which provided for the delivery of 50,000 bushels of organic soft white wheat.

The contract stated, "Trade Rules to Govern: National Grain and Feed Association."

GMI claimed that the parties entered into contract number 8097 on Sept. 18, 2007. GMI stated that pursuant to its regular practice, it signed the contract confirmation and faxed it to Rowland. Rowland did not return a signed copy of the contract to GMI; nor did Rowland object to the confirmation. According to GMI, Rowland then shipped a total of four railcars of organic soft white wheat to GMI against this contract, and Rowland received payment in full for those deliveries.

GMI alleged that Rowland refused to complete delivery under the terms of contract number 8097 after Rowland advised GMI

that the trade should have been for only a total of four loaded railcars, rather than the quantity term of 50,000 bushels stated on the contract. GMI then purchased the bushel quantity that remained under contract number 8097 from alternative suppliers. GMI claimed damages of \$489,049.88 against Rowland for losses representing the alleged undelivered bushels under contract number 8097.

Prior to any issues surfacing between the parties with respect to contract number 8097, GMI had signed and faxed a separate contract dated Dec. 28, 2007 (contract number 9143) to Rowland for delivery of approximately 148,500 bushels of organic soft white wheat. GMI stated that it had no record of a signed version of this contract being returned by Rowland. During this arbitration proceeding, Rowland produced a copy of contract number 9143 that was signed by both parties. After the dispute over contract number 8097 arose, GMI informed Rowland that contract number 9143 had been canceled. In response, Rowland counterclaimed against GMI for \$1,164,000 in alleged damages related to contract number 9143.

The Decision

The arbitrators first considered the validity of contract number 8097. In so doing, the arbitrators cited NGFA Grain Trade Rule 3(B) [Confirmation of Contracts], which states as follows:

If either the Buyer or the Seller fails to send a confirmation, 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, therefore, concluded that contract number 8097 was a valid agreement between the parties given that Rowland never objected to the terms of the mailed confirmation.

Next, the arbitrators considered whether contract number 9143 was valid. Pursuant to NGFA Grain Trade Rule 3(B), and based upon the prior practice and course of dealings between GMI and Rowland, the arbitrators deemed that contract number 9143 also was a valid agreement between the parties. Regarding the extent of GMI's obligations under contract number 9143

upon GMI encountering the issues related to contract number 8097, the arbitrators cited NGFA Grain Trade Rule 28(C), which states as follows:

Failure to perform any of the terms and conditions of a contract shall be grounds only for the refusal of such shipment or shipments, and not for rescision of

the entire contract or any other contract between the Buyer and the Seller.

Therefore, the arbitrators concluded that Rowland's alleged refusal to fulfill contract number 8097 did not entirely relieve GMI of its obligations under contract number 9143.

The Award

Concerning contract number 8097, the arbitrators decided in favor of GMI in the amount of \$489,049.88, which represented the difference between the contract price and what it paid to cover the undelivered quantity.

Regarding contract number 9143, the arbitrators decided in favor of Rowland in the amount of \$148,500, which the arbitrators determined was the market price spread at the time that Rowland was notified of the cancellation of the contract.

The arbitrators therefore ordered Rowland to pay GMI the amount of \$340,549.88. The arbitrators further decided to provide for an additional award for interest, but only if the defendant failed to pay under this order within 45 days of notification of this decision. If that does not occur, the interest that would accrue to this award would be at the rate of 3.25 percent, pursuant to the NGFA Arbitration Rules, from the time of the initial complaint on Dec. 17, 2009 until paid in full.

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

Kyle Jeworski, Chair

Vice President, Grain Merchandising and Transportation
Viterra Inc.
Regina, Saskatchewan, Canada

Bruce Bastert

General Manager
Ludlow Cooperative Elevator Co.
Ludlow, Ill.

Tod Clark

Chief Executive Officer
Farmer's Cooperative Elevator Co.
Hemingford, Neb.

Arbitration Appeals Case Number 2496

Plaintiff/Appellee: Grain Millers Inc., Eden Prairie, Minn.

Defendant/Appellant: Rowland Seeds Inc., Taber, Alberta, Canada

Statement of the Case

This case demonstrated the consequences of poor contract confirmation and administration by both parties. The original Arbitration Committee decided that both disputed contracts were valid. The original Arbitration Committee's decision favored Grain Millers Inc. ("GMI") on the first disputed contract, and favored Rowland Seeds Inc. ("Rowland") on the second disputed contract. Rowland subsequently appealed the decision.

This Arbitration Appeals Committee, individually and col-

lectively, reviewed all the arguments and supporting exhibits of Arbitration Case 2496, along with the findings and conclusions of the original arbitrators. The Appeals Committee also reviewed the appeal briefs filed by the parties.

The statement of the case as presented by the original Arbitrator Committee detailed the essential facts as evidenced throughout the case. The essence of the case was whether certain contracts existed between GMI and Rowland.

The Decision

The Appeals Committee determined that the evidence presented by the parties demonstrated that both contracts numbered 8097 and 9143 existed and were valid between the parties.

The Appeals Committee noted:

- ▶ GMI claimed that one "PURCHASE CONTRACT" sent was a purchase confirmation, but that the other "PURCHASE CONTRACT" sent was only an "offer." The Appeals Committee determined both were confirmations of a valid contractual agreement between the two parties.

- ▶ Rowland failed to send written confirmations of the trades, but even more troubling, Rowland failed to properly notify the counterparty upon allegedly finding the documentation and actions of GMI to be in conflict with Rowland's understanding of the trades. Rowland's actions and course of dealings undermined Rowland's argument that contract number 8097 did not exist.

The Arbitration Appeals Committee also agreed that NGFA Grain Trade Rule 3 [Confirmation of Contracts] and NGFA Grain Trade Rule 28 [Failure to Perform] were properly cited and utilized to determine the decision and award by the original Arbitration Committee.

The Award

The Arbitration Appeals Committee affirmed the decision and award of the original Arbitration Committee.

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

Roger Krueger, *Chair*
Vice President, Grain Marketing
South Dakota Wheat Growers Association
Aberdeen, S.D.

John Anderson
Chief Executive Officer
Ritzville Warehouse Co.
Ritzville, Wash.

Charles Elsea
Chief Executive Officer
The Scoular Company
Omaha, Neb.

Edward Milbank
President
Milbank Mills Inc.
Chillicothe, Mo.

Steve Young
Grain Merchandiser
Grainland Cooperative
Holyoke, Colo.