



National Grain and Feed Association

Arbitration Decision

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March 26, 2012

Arbitration Case Number 2505

Plaintiff: DeBruce Grain Inc., Kansas City, Mo.

Defendant: Hills Family LLP, Pierce City, Mo.

Statement of the Case

This case concerned a dispute over contract performance between DeBruce Grain Inc. (DeBruce), and Hills Family LLP (Hills) with Hills as the seller and DeBruce as the buyer of a quantity of U.S. No. 2 yellow corn.

The original terms of the contract (contract number PC6027922), which was executed through a broker, called for Hills to deliver 60,000 bushels of U.S. No. 2 yellow corn with specified moisture of 15.5 percent or less to Cassville, Mo., for December 2009 shipment at \$3.58 per bushel. Neither party disputed the original terms or validity of the contract.

The dispute arose when Hills failed to deliver the contracted corn to Cassville, Mo., during December 2009, and DeBruce subsequently canceled the contract. DeBruce provided unload numbers to the broker to forward to Hills on Dec. 4, 2009. On Jan. 4, 2010, DeBruce contacted the broker to inform her that it had not received any invoices from Hills for corn delivered to Cassville, Mo. The broker responded that she had left a message for Hills' farm manager. On Jan. 5, 2010, DeBruce

contacted the broker, who informed DeBruce that she had not heard back from Hills. DeBruce also attempted to contact Hills directly on Jan. 5, 2010, with no response.

On Jan. 6, 2010, the broker forwarded an email from DeBruce to Hills in an attempt to resolve the delivery issue. Hills' office assistant responded via email, "*Andy did ask me to let you know we do not have the corn to fulfill this contract.*" DeBruce, through the broker, then emailed a contract cancellation notice to Hills on Jan. 6, 2010, which informed Hills that DeBruce would apply a cancellation price of \$4.49 per bushel (+\$.30 CH + futures price \$4.19).

On Jan. 7, 2010, during direct contact between the parties, Todd Hills informed DeBruce that his office assistant did not have authority with respect to the handling of grain contracts entered into by Hills. DeBruce then informed Hills that after allegedly repeated attempts to contact him, the contract had been canceled on Jan. 6, 2010. DeBruce sent a cancellation letter and invoice to Hills for \$54,600 on Jan. 7, 2010.

The Decision

Neither party disputed the validity or the terms of the original contract. Nor did they dispute that Hills was out of contract terms at the end of December, when Hills failed to deliver the contracted corn. Hills argued that DeBruce did not act appropriately in canceling the contract, and did not cancel the contract at the appropriate price.

NGFA Grain Trade Rule 28 [Failure to Perform] states, in relevant part:

(A) Seller's Non-Performance

If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Buyer by telephone and confirmed in writing. The Buyer shall then, at once elect either to:

(1) agree with the Seller upon an extension of the

contract; or
(2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or
(3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

If the Seller fails to notify the Buyer of his inability to complete his contract, as provided above, the liability of the Seller shall continue until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. In such case it shall then be the duty of the Buyer, after giving notice to the Seller to complete the contract, at once to:

(1) agree with the Seller upon an extension of the

contract; or
(2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or
(3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

The arbitrators concluded that Hills failed to notify DeBruce of its inability to complete the contract for December delivery, and that DeBruce subsequently exercised due diligence in promptly determining that Hills had defaulted. The arbitrators determined that, as the broker was involved in the notification of the cancellation-price determination, DeBruce had canceled the contract at a fair market value.

The Award

Therefore, DeBruce was awarded the cancellation costs of \$54,600 against Hills Family LLP.

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

Kevin Thompson, *Chair*

Senior Manager
The Scoular Company
Preston, Idaho

John Aeschliman

Branch Manager
Grainland Cooperative
El Paso, Ill.

William Ahlbrecht

Assistant General Manager
Ag Partners Co-op
Goodhue, Minn.