



National Grain and Feed Association Arbitration Decision

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January 9, 2014

CASE NUMBER 2619

Plaintiff: US Commodities LLC, Minneapolis, Minn.

Defendant: Dan Groothuis, Willmar, Minn.

STATEMENT OF THE CASE

This dispute involved five purchase contracts between US Commodities LLC (“USC”), as the buyer, and Dan Groothuis (“Groothuis”), as the seller, for delivery of a total of 95,000 bushels of U.S. No. 2 yellow corn and 5,000 bushels of U.S. No. 1 soybeans, pursuant to a Grain Marketing Program Agreement (“Program Agreement”).

Both Groothuis and USC signed the Program Agreement on February 11, 2010. The parties then entered into five “*Maximizer (MAXPUR)*” purchase contracts – contract numbers 95652, 95653, 95654 and 95655 for the 95,000 bushels of corn and contract number 95656 for the 5,000 bushels of soybeans. Each of these contracts was dated February 15, 2010, and signed by both Groothuis and USC.

USC stated Groothuis delivered 16,373.56 bushels of corn in June-July 2010 in partial fulfillment of contract number 95652. USC also stated that contract number 95655 was satisfied between the parties and was not a part of this case. According to USC, Groothuis informed USC on December 29, 2010, that he would not be delivering further grain under any of the contracts. On December 30, USC cancelled contract numbers 95653, 95654, 95656 and the unfulfilled portion of contract number 95652. USC claimed total damages of \$141,311.01 on the cancelled contracts.

According to USC, the parties agreed to a settlement that was confirmed in writing on January 27, 2011, which states as follows:

Per our agreement, US Commodities LLC (USC) will allow you to make 4 payments totaling \$120,000.00 in settlement of our existing claim. We are in receipt of your initial payment of \$30,000. You hereby agree to make 3 additional payments of \$30,000 each, on or before the following dates: July 21, 2011, January 21, 2012 and July 21, 2012.

USC stated that Groothuis submitted the initial payment of \$30,000 as well as the payment due on July 21, 2011 for a total of \$60,000. USC claimed that Groothuis failed to make the payments allegedly due on January 21 and July 21, 2012. USC seeks damages in this arbitration proceeding of \$81,311.01.

In response to USC’s arguments, Groothuis stated that he was misled with respect to expectations and obligations under the Program Agreement. Groothuis stated:

[He] was led to believe that his commodities would be simply held as collateral for the trading of commodities pools, that physical delivery was not expected or even anticipated, except on rare occasions, and that in the past checks had been issued to participants instead of delivery.

Based upon this understanding, Groothuis claimed he committed 80% of his 2010 total production to the Program Agreement. Groothuis argued the Program Agreement was invalid as a futures contract because actual delivery of the grain was not anticipated.

According to Groothuis, when he learned from Northstar Commodity Investment Co. (USC's affiliate that was designated to make pricing decisions for the commodities pools under the Program Agreement) that the pool in which his grain was placed was losing money, he spoke with an individual associated with both Northstar and USC. Groothuis argued that this individual stated Groothuis' losses would be transferred into a different pool for the 2011 crop year. Groothuis claimed that based upon this information, he made other arrangements to sell his crop before the end of 2010. He further argued that USC had failed to sufficiently prove the damages it claimed.

Groothuis claimed that when USC demanded delivery under the contracts he was compelled to deliver grain under contract numbers 95652 and 95655 at below-market prices. Groothuis also claimed he was compelled into the settlement arrangement with USC. Groothuis asserted a counterclaim for reimbursement of the \$60,000 paid under the settlement agreement in addition to compensation for grain delivered at below-market prices and other additional damages.

THE DECISION

The arbitrators closely examined the terms of the Program Agreement and the individual purchase contracts. In particular, the arbitrators noted:

In paragraph 1, the Program Agreement stated: "**SALE: Seller hereby makes a FIRM COMMITMENT to SELL the quantity of GRAIN specified herein to Buyer on the terms stated herein.**" (Emphasis in original).

In paragraph 3, the Program Agreement provided specifics on the commodities, quantities, pricing periods and delivery periods that were subsequently also incorporated into the individual purchase contracts. Paragraph 3 also described how the grain was to be enrolled and priced as part of a pool.

In paragraph 4, the Program Agreement stated: "**DELIVERY:** Seller agrees to sell Grain to Buyer at Buyer's call for delivery during the Delivery Period."

In paragraph 5, the Program Agreement stated: "**RISK:** Seller acknowledges that grain markets are volatile and trading in commodity markets involves significant risk. Seller's final price at time of delivery may be more or less than current market."

In consideration of these contract provisions as well as the arguments and documentation submitted by the parties, the arbitrators determined that the evidence did not support Groothuis' claims that actual delivery of grain was not anticipated under the contracts. Nor did the evidence support that Groothuis did not have reason to be aware of the risks involved. The arbitrators concluded that the signed written agreements between the parties were valid.

With respect to Groothuis' argument that the parties orally agreed to roll his contracts into a pool for the subsequent crop year, the arbitrators noted that under paragraph one under "ADDITIONAL TERMS AND CONDITIONS," the Program Agreement provided:

This confirmation, together with cash grain confirmations, addenda, pricing confirmations, and any amendments and said trade rules constitute the complete agreement between two parties, and cannot be changed in any manner, except in writing and signed by Buyer's duly authorized agents. In case on any inconsistency between Buyer's and Seller's confirmation, Buyer's confirmation governs.

The arbitrators consequently concluded that in the absence of any written support for the argument that the contracts had been extended or amended, the original terms of the contracts were enforceable.

The arbitrators further determined that when Groothuis informed USC he could or would not be making further deliveries under the contracts, it was appropriate for USC to cancel and buy-in the contracts. The arbitrators noted the purchase contracts provided, "Rules to Govern: National Grain and Feed Association." NGFA Grain Trade Rule 28(A) [Seller's Non-Performance] states as follows:

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 confirmed by subsequent written communication. 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.

The arbitrators agreed with Groothuis with respect to USC's failure to provide adequate and fully complete information of market values to support its claim for damages of \$81,311.01. Instead, the arbitrators recognized the settlement payment agreement reached by USC and Groothuis. Groothuis tendered the first two payments under that agreement (the initial payment as well as the payment six months later). USC acknowledged receipt of those payments. The arbitrators consequently decided that Groothuis was to pay to USC the amount remaining under the agreement of \$60,000.

THE AWARD

Groothuis is ordered to pay \$60,000 to USC. The arbitrators also awarded interest at the rate of 3.25% (pursuant to NGFA Arbitration Rule 8(m)) from August 15, 2013, the date of the decision, until the award is fully paid.

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

David Fiebiger, *Chair*

Manager

Finley Farmers Grain & Elevator

Finley, ND

Robert Knief

President

Bartlett Grain Company LP

Kansas City, MO

Terry Knudson

General Manager

Ag First Farmers Co-op

Brookings, SD