



January 9, 2014

CASE NUMBER 2621

Plaintiff: Specialty Grains, Inc., Gibson City, Ill.

Defendant: Stonebridge LTD, Cedar Falls, Iowa

STATEMENT OF THE CASE

The seller, Specialty Grains, Inc. (SGI), entered into a grain contract, dated Feb. 1, 2010, with the buyer, Stonebridge LTD (Stonebridge), for the delivery of 1800 metric tons of U.S. No. 1 soybeans. SGI shipped a total of 762 metric tons of soybeans to Stonebridge under the contract in different amounts on various dates between April 6 and August 8, 2011. In early August 2011, Stonebridge was informed by its buyer of various quality issues with the soybeans that were detected overseas. A number of communications followed and, on August 10, 2011, Stonebridge requested that SGI suspend further shipments under the contract.

SGI claimed \$52,626.82 in damages against Stonebridge for soybeans that SGI shipped but had not yet been paid for by Stonebridge. SGI also claimed \$72,148.22 in damages for Stonebridge's alleged repudiation of the remainder of the bushels under the contract. In total, SGI claimed \$124,775.04 in damages. SGI also requested interest at the rate of 18% and reimbursement for arbitration and attorney's fees.

According to Stonebridge, SGI was not entitled to damages for cancellation of the contract because the parties had mutually rescinded the contract. Stonebridge also claimed \$154,293.94 in damages against SGI for reimbursement of additional transportation and cleaning expenses that Stonebridge alleged it incurred because of the quality issues with the soybeans. Stonebridge reduced its claim for damages to \$101,667.12 because of the amount withheld of \$52,626.82 from its payment to SGI. Stonebridge also requested interest at the rate of 18% and reimbursement for arbitration fees and attorney's fees in the amount of \$5,000.

THE DECISION

The arbitrators determined that there was agreement between the parties that the amount unpaid and due to SGI on the soybean shipments was \$52,626.82. The parties also agreed that the quantity of soybeans that remained under the contract and were subject to SGI's claims for cancellation costs was in the range of 366 and 382 metric tons. The arbitrators' calculations were consistent with those submitted by Stonebridge, which indicated that the quantity of soybeans cancelled under the contract was 382 metric tons.

The issues on which the parties disagreed were: (1) Stonebridge's claim for additional transportation and cleaning costs; and (2) SGI's claim for cancellation costs.

The arbitrators closely examined the contract between the parties in this case and reached the following conclusions:

- Both SGI and Stonebridge entered into and executed the grain contract identified as "*Transaction #P-961*." The contract was signed by both parties. The contract, which was prepared by Stonebridge and submitted to SGI, was dated Feb. 1, 2010. SGI signed it on Feb. 2, 2010.

- The contract stated that the soybeans were to be of the *P93B82* variety from the 2010 crop.
- The section of the contract entitled “*Quality*” stated as follows:

QUALITY: Cleaned, sized, graded, and free of dirt, stones, corn, shrunken beans, green and moldy beans. Sized through a 24/64 round hole screen and over a 12/64 slotted screen. Maximum of 1% to go through a 12/64 slotted screen. a) Minimum test weight: 56 pounds per bushel; b) Maximum moisture: 13%; c) Maximum foreign material: 0.1%; d) Maximum splits: 1.0%; e) Maximum damage: 1.0%; f) Maximum heat damage: complete absence thereof; g) Maximum beans of other color: 1.0%; h) Musty, moldy, sour or other objectionable odor: complete absence thereof. Quality is subject to approval by Buyer prior to or at time of shipment.
- The pricing to be established under the contract was a plus \$3.50 basis price for “*bagged*” or “*tote*” shipments and a plus \$3.00 basis price for “*bulk in container*” shipments. Either basis was to be priced with reference to the applicable CBOT futures month for the time of delivery.
- Shipment under the contract was to occur between “Harvest” 2010 and September 2011. Under “*Other*” terms, the contract provided “*SDI strip test per container indicating no GMO contamination*” and “*Pest management controls in place during Indian Meal Moth season.*”
- The contract also stated that the NGFA Trade Rules would govern the contract to the extent the rules were “not inconsistent” with the contract. The arbitrators noted that the Preamble to the NGFA Grain Trade Rules states as follows:

All Active members and other parties using these rules are free to agree upon any contractual provisions, which they deem appropriate, and these rules apply only to the extent that the parties to a contract have not altered the terms of the rules, or the contract is silent as to a matter dealt with by the pertinent rule.

With respect to Stonebridge’s claim for additional transportation and cleaning costs, the arbitrators determined it was of utmost importance in this case that the contract terms specifically provided that, “*Quality is subject to approval by Buyer prior to or at time of shipment.*” Based upon the submissions of the parties, the arbitrators concluded that SGI had shipped the various quantities of soybeans from April 6, 2011 through August 8, 2011. The arbitrators further determined, however, that Stonebridge did not communicate with SGI regarding any quality or approval issues related to the soybeans until after the time of shipment. On August, 10, 2011, Stonebridge instructed SGI to “suspend any further shipments.”

Stonebridge argued that SGI breached the contract by shipping soybeans that were not in compliance with the quality terms of the contract. According to Stonebridge, the contract clause that provided for Stonebridge to approve or disapprove the soybeans by the time of shipment did not apply to the adequacy of the cleaning of the soybeans. However, the arbitrators determined the clause in the contract – “*Quality is subject to approval by Buyer prior to or at the time of shipment*” – was in the same section of the contract entitled “*Quality*” that also referred to cleaning, sizing, grading, color, odor and damage as well as the absence of dirt, stones and mold. The specific quality parameters that included the requirements for cleaning and maximum permissible content of foreign materials were expressly joined in the same section of the contract with the provision that provided quality was subject to the buyer’s approval by the time of shipment. The arbitrators consequently denied Stonebridge’s claim for additional transportation and cleaning costs.

With respect to SGI's claims for damages, the arbitrators concluded that SGI was entitled to cancellation costs following the notice from Stonebridge that further shipments under the contract be suspended. The evidence submitted in this case did not support Stonebridge's argument that the parties had mutually rescinded the contract.

The arbitrators determined that NGFA Grain Trade Rule 28(B) applied in this case. Rule 28(B) states as follows:

If the Buyer 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 Seller by telephone confirmed by subsequent written communication. The Seller shall then, at once elect either to: (1) agree with the Buyer upon an extension of the contract; or (2) sell out for the account of the Buyer, 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 noted that the parties in their submissions failed to adequately address the calculation of cancellation costs. The arbitrators could not identify evidence in the parties' submission that sufficiently indicated that a futures price had been fixed on the quantity of 382 metric tons (14,036 bushels) of soybeans that was cancelled under the contract. Therefore, based upon the information and evidence provided, the arbitrators decided to calculate damages with reference to SGI's sale of the remaining unfilled soybeans on Sept. 16, 2011. The arbitrators consequently decided that SGI was due 75-cents per bushel (representing the contract price of \$3.00 per bushel less the cleaning credit of 50-cents per bushel and the Sept. 16, 2011 sale price of \$1.75 per bushel) for total cancellation costs of \$10,527 for the 14,036 bushels.

THE AWARD

The arbitrators awarded \$63,153.82 to SGI from Stonebridge for the cancellation costs of \$10,527 and unpaid amount on prior shipments of \$52,626.82. Interest shall accrue on the award at the rate of 3.25 percent per annum pursuant to NGFA Arbitration Rule 8(m) from the date of this decision until the award is paid in full. The arbitrators declined to award arbitration fees or attorneys fees to either party.

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

Scott Dubbelde, *Chair*
General Manager
Farmers Cooperative Elevator Co.
Hanley Falls, Minn.

Kevin Callahan
Vice President
Columbia Grain Inc.
Portland, Ore.

Joe Christopher
Senior Grain Manager
Crossroads Cooperative Association
Sidney, Neb.