



January 9, 2014

CASE NUMBER 2629

Plaintiff: ADM Grain Co., Decatur, Ill.

Defendant: Sorenson Grain LLC, Bonduel, Wis.

STATEMENT OF THE CASE

This dispute involved 19 contracts between ADM Grain Co. (ADM) and Sorenson Grain LLC (Sorenson Grain), for soybeans, corn and soft red winter wheat.

Between October of 2010 and August of 2011, Sorenson Grain entered into 19 separate grain contracts for 11,000 bushels of soybeans, 178,000 bushels of corn, and 6,500 bushels of soft red winter wheat to be delivered to Ag Services of Wisconsin's (Ag Services) elevator at Oshkosh, Wisc. Of these 19 grain contracts, 13 contracts had a delivery due date of Dec. 31, 2011, four contracts were March hedge-to-arrive (HTA) contracts, one contract was a July HTA and one contract had a delivery due date of Aug. 31, 2012. All 19 contracts were signed by Stuart Sorenson, owner and operator of Sorenson Grain.

In Aug. 2011, ADM acquired the Oshkosh, Wisc. elevator location and assumed all of Ag Services' contracts with Sorenson Grain.

ADM claimed that the December 2011 deadline passed without any contact from Sorenson Grain. On Feb. 1, 2012, an ADM representative sent Sorenson Grain a letter, which stated: "We have attempted repeatedly to contact you regarding your past due grain contracts . . . Without a response by February 10, 2012, we will proceed with cancelling these contracts per NGFA trade rules on February 13, 2012 market close."

On Feb. 14, 2012, an ADM representative sent Sorenson Grain a letter informing it that the 13 contracts had been cancelled on Feb. 13, 2012. This letter also demanded assurances that Sorenson Grain would deliver on the March HTA contracts. The letter stated: "Please contact me by the end of the day February 29, 2012 regarding (the March HTA) contracts. If we have not heard from you by then, we will proceed with cancelling these contracts on March 1, 2012 market close per NGFA trade rules."

ADM argued that it received no response to the Feb. 14, 2012 letter from Sorenson Grain. On Feb. 29, 2012, ADM cancelled Sorenson Grain's March HTA contracts at the market close price.

On March 12, 2012, an ADM representative sent a letter to Sorenson Grain seeking assurances that the two remaining contracts, the July HTA contract and the contract for Aug. 31, 2012 delivery, would be performed upon. ADM claimed that it did not receive a response from Sorenson Grain and, therefore, cancelled these contracts on March 21-22, 2012.

ADM claimed total damages of \$139,512.71. ADM also argued that Sorenson should be held individually liable for damages, as his name was on the contracts.

Sorenson Grain argued that ADM had breached the 19 contracts before delivery was due. Sorenson Grain claimed that Ag Services would provide crop inputs to Sorenson Grain at an interest rate of 8% and Sorenson Grain's fall harvest would be applied to the balance due upon delivery. Sorenson Grain asserted that when ADM acquired Ag Services, ADM attempted to apply an 18% interest rate to the crop inputs. Sorenson Grain claimed that because ADM did not correct this mistake in a sufficiently timely manner, ADM had effectively breached the grain contracts. Both Sorenson Grain and ADM provided evidence to show that the interest rate dispute was ultimately fixed.

THE DECISION

After carefully reviewing all of the evidence, the arbitrators ruled in favor of ADM.

The arbitrators decided that while Sorenson Grain and Ag Services had, in the past, participated in the offset financing for crop inputs, the contracts to sell the crops were entirely separate transactions. NGFA Arbitration Rules Section 2 states:

The term dispute as used, herein shall be deemed to cover the original complaint as filed, and also any cross complaint, counterclaim, or offset as set forth by the defendant, but in no case shall the matters submitted by the defendant be any other than those directly related to the transaction on which the original complaint was made.

Therefore, the arbitrators focused their decision on whether the 19 grain contracts existed and were mutually agreed upon. The arbitrators noted that Sorenson Grain did not dispute the contracts existed. The arbitrators concluded that the signatures by both parties on each of the 19 contracts demonstrated that these contracts were enforceable.

The arbitrators noted that Sorenson Grain did not reply to any of ADM's letters that notified Sorenson Grain that ADM would cancel the contracts unless Sorenson Grain provided a response. The arbitrators concluded that ADM correctly and fairly applied NGFA Grain Trade Rule 28 in the cancellation of these contracts.

The arbitrators agreed with Sorenson Grain that all of the contracts were specifically between Sorenson Grain and Ag Services/ADM, and not with Sorenson individually, as evidenced by the addressee to whom all of the contracts were sent.

THE AWARD

The arbitrators ruled in favor of ADM in the amount of \$139,512.71. Interest shall accrue on the award at the rate of 3.25 percent pursuant to NGFA Arbitration Rule 8(m) from Feb. 29, 2012 until the award is paid in full.

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

Sean Broderick, Chair
Senior Merchandising Manager
CHS
Inver Grove Heights, Minn.

Keith Hunt
Feed Grains Trade Manager
Attebury Grain LLC
Amarillo, Tex.

Duane Madoerin
Merchandising Manager
Gold-Eagle Cooperative
Goldfield, Iowa