



National Grain and Feed Association Arbitration Decision

www.ngfa.org | www.ngfa.org/decisions

1400 Crystal Drive, Suite 260
Arlington, VA 22202

P: (202) 289-0873
F: (202) 289-5388

January 24, 2024

CASE NUMBER 2941

**PLAINTIFF: TERRA INGREDIENTS, LLC
MINNEAPOLIS, MN**

**DEFENDANT: THUNDERBIRD COMMODITIES, INC.
MANHNOMEN, MN**

STATEMENT OF THE CASE

At dispute in this case between the plaintiff, Terra Ingredients, LLC (Terra), and the defendant, Thunderbird Commodities, Inc. (Thunderbird), is a contract for the purchase of 43,008 bushels or 48 shipments of organic yellow corn for delivery December 11, 2020, through June 30, 2021, by rail or truck, FOB Mahnomen, MN (Terra's contract number 507113). The parties dispute the validity of this contract.

On or about Dec. 11, 2020, Terra and Thunderbird entered into a contract for the purchase and sale of approximately 43,000 bushels of Organic Yellow Corn with a FOB Mahnomen, MN price of \$6.10 per-bushel for shipment via truck or rail. The contracted volume was to be picked up via Buyer's call between Dec. 11, 2020, and June 30, 2021, with transloading fees and GMO testing expenses covered in the contract price. According to the contract, final contract volume was to be determined by the nearest full loaded shipment container (truck or rail car).

Except as otherwise noted, the following communications were exchanged by text between Terra's merchandiser and Thunderbird's CEO:

On January 15, 2021, Terra requested rail cars for delivery to final destination during the second week of February. Thunderbird replied that it "should have cars available next week."

On Wednesday, February 3, 2021, Terra inquired about the loading of the cars noted on January 15.

On Thursday, February 4, Thunderbird noted that it "should have a car or two this weekend."

On Friday, February 12, Terra had not received any product from Thunderbird. Terra requested a call from Thunderbird regarding the status of product. Thunderbird replied it would call Terra on Monday, February 15.

On Monday, February 15, Thunderbird did not call Terra as it had stated.

On March 24, Terra inquired with Thunderbird about the availability of product to be loaded for shipment over the next couple weeks. Thunderbird did not reply.

On May 12, Terra requested a call from Thunderbird to discuss the undelivered corn. Thunderbird replied it would call the following day. Thunderbird failed to call Terra the next day as stated.

On May 14, again Terra requested a call from Thunderbird. Thunderbird did not reply.

On May 18, again Terra requested a call from Thunderbird regarding the undelivered corn. Thunderbird responded he would be in the office soon. Terra noted a desire to resolve the undelivered corn.

On May 19, Terra and Thunderbird spoke via telephone. Thunderbird stated he had no corn to ship due to rising prices.

On May 20, Thunderbird stated via text to Terra, “sorry transportation had to mess up delivery of these contracts and then conventional markets went sky high leaving me with no product now to ship.”

On May 20, Terra responded to Thunderbird’s text message attempting to salvage the situation for both parties with potentially alternative opportunities. Thunderbird did not respond to or acknowledge Terra’s message.

On June 1, Terra mailed Thunderbird via return receipt notifying Thunderbird of its default if no shipments had been made by June 7, 2021.

Terra argues the parties entered into a valid and enforceable grain contract. Terra claims Thunderbird acknowledged the existence of the contract via text and verbally multiple times. Terra claims it requested Thunderbird to ship corn against the contract multiple times, which Thunderbird acknowledged via text, yet Thunderbird chose not to load or apply any grain for Terra.

Terra claims Thunderbird said it had no grain to apply to the contract between the parties. Terra claims to have proposed alternative resolutions in an effort to avoid claiming default of Thunderbird against this contract. Terra claims to have notified Thunderbird of its plan to place Thunderbird in default of the contract if no applications had been made by June 7. Terra argues it performed with due diligence by seeking alternative resolutions for Thunderbird to perform against the obligations of the contract. Terra claims no telephone conversation occurred stipulating the need for an organic certification be provided by Thunderbird in order to validate the contract. Terra claims a previously provided organic certification for Thunderbird was sufficient as was information related to current certification status publicly available from USDA. Terra claims to have received satisfactory information from these data sources to approve Thunderbird’s organic certification. Terra argues Thunderbird received a contract confirmation timely via electronic transmission and Thunderbird did not dispute the confirmation.

On the other hand, Thunderbird argues the contract between the parties was not valid because organic certification was not provided to Terra. Thunderbird argues the text messages with Terra are in regard to new business, outside of the contract in question. Thunderbird claims a phone conversation on December 11, 2020, between the parties included a discussion requiring Thunderbird to provide an organic certification for the contract to be valid. Thunderbird states it never provided an organic certification making the contract void.

THE DECISION

The arbitrators reached the following conclusions:

The contract was valid and enforceable, as was confirmed by Terra to Thunderbird, and without objection from Thunderbird at that time.

Thunderbird acknowledged receipt of the confirmation, did not object to the sale to Terra, and a meeting of the minds fully occurred.

On the day after receiving notification from Thunderbird that it had no grain to apply to the contract, Terra could have begun buying-in organic yellow corn for Thunderbird's account.

Terra continued to work in good faith with Thunderbird in an effort to reach an amicable resolution, outside of arbitration, between the parties.

According to the remarks in the contract confirmation and the standard of the trade, the rights for approval and acceptance of Thunderbird's organic certification rested solely in Terra's control. If Terra's decision to accept Thunderbird's organic certification is based upon confirmation from outside sources, it can be independent of further acts or provisions by Thunderbird.

The text messages presented related to the contract at hand and inherently implied the approval and acceptance of Thunderbird's organic certification. The text messages were not in regard to new business and outside of the contract given that no other contracts, prices, or terms are referenced anywhere in the communications or material presented. Accordingly, Terra was fully attempting to receive shipments of organic yellow corn in each instance against the contract in question.

The standard of the trade does not allow for a contract to be void due to the lack of another party providing a certificate. Rather, if a party could not provide a suitable certification, the opposing party would ultimately still have enforceable rights against the defaulting party for the defaulting party's account.

THE AWARD

The arbitrators ruled in favor of Terra Ingredients, LLC in the amount of \$124,003.58. The arbitrators calculated damages based on FOB Price Per Bushel of the alternative corn purchased to replace the defaulted bushels on the contract. No information was provided to the arbitrators that defined the freight and put-through costs incurred with the alternative corn purchased. Since the original contract with Thunderbird was on a FOB basis, the arbitrators concluded that appropriate market replacement for the calculation of damages shall also be the FOB basis equivalent for all alternative bushels purchased. An overview of these calculations is provided below. No interest or attorney's fees are awarded.

Contract #	Contract Date	Seller	Bushels	Price Per Bushel	Freight Adjustment	Net Contract Price	Contract Value
529095	8/3/2021	Leaf River Farms	4,595.30	\$ 9.00	\$ -	\$ 9.00	\$ 41,357.70
525933	6/29/2021	Leaf River Farms	3,039.31	\$ 9.50	\$ (0.50)	\$ 9.00	\$ 27,353.79
521459	6/7/2021	Doug Lundeen	5,081.77	\$ 9.25	\$ -	\$ 9.25	\$ 47,006.37
520956	6/1/2021	Henry Miller	3,283.56	\$ 8.65	\$ -	\$ 8.65	\$ 28,402.79
520850	5/28/2021	Leaf River Farms	3,035.357	\$ 9.50	\$ -	\$ 9.50	\$ 28,835.89
529575	8/10/2021	Midwest Protein	3,857.14	\$ 9.00	\$ -	\$ 9.00	\$ 34,714.26
521642	6/8/2021	Midwest Protein	355.4683	\$ 9.00	\$ -	\$ 9.00	\$ 3,199.21
520601	5/25/2021	Midwest Protein	8,620.004	\$ 8.75	\$ -	\$ 8.75	\$ 75,425.04
		Total Bushels:	31,867.9093			Total Value:	\$286,295.06
					Wtd Ave Price:	\$ 8.9838	
		Contract Bushels:	43,000				
		Contract Price:	\$ 6.10				
		Price Difference:	\$ 2.8838				
		Value Due Plaintiff:	\$124,003.58				

Decided: August 4, 2023

SUBMITTED WITH THE UNANIMOUS CONSENT OF THE ARBITRATORS, WHOSE NAMES APPEAR BELOW:

Andrew Riffe, Chair
President
Stratford Grain Co.
Stratford, TX

Trent Schairer
Vice President of Transportation
Bartlett Grain Company LP
Kansas City, MO

Jason Selking
GM- Eastern Ohio Valley
Region
CGB Enterprises Inc.
Jeffersonville, IN