National Grain and Feed Association

Arbitration Decision

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March 26, 2012

Arbitration Case Number 2361

Plaintiff: **Cargill Inc., Minneapolis, Minn.**

Defendant: **Philen Farm Partnership, Natchez, La.**

Statement of the Case

This case originated with two purchase contracts executed between the buyer, Cargill Inc. (Cargill), and the seller, Philen Farm Partnership (Philen) involving the sale of soybeans and soft red winter wheat, respectively. This case was ordered to NGFA Arbitration by the U.S. District Court of the Middle District of Louisiana.

Contract Number 26593:

On Feb. 9, 2006, the parties entered into contract number 26593, which provided for the sale of 10,000 bushels of U.S. No. 1 yellow soybeans at the price of $6.30 per bushel, with a delivery period of October-November 2006. The delivery period under the contract subsequently was accelerated to August 2006. The arbitrators noted that both parties considered this contract valid.

According to Cargill, the parties further entered into a Premium Offer Contract agreement on July 24, 2006, whereby Cargill agreed to pay an additional 17 cents per bushel on the initial 10,000 bushels under contract number 26593. In exchange, Philen agreed to deliver an additional 10,000 bushels in the event that the November 2007 futures price reached (or exceeded) $6.35 per bushel. Cargill maintained that Philen failed to comply with the terms of this agreement when those conditions presented themselves. Therefore, upon Philen's alleged failure to perform, Cargill cancelled the contract on Dec. 28, 2007. Cargill claimed a loss of $57,300 as the result of Philen's alleged breach of this contract and the significant increase in market prices that occurred thereafter.

Philen contended that it attempted to deliver soybeans under the Premium Offer Contract on between five and seven separate occasions. Philen stated that Cargill's own records confirmed that its facilities either were closed or not accepting deliveries of soybeans on those occasions. Thus, Philen maintained, it was willing and able to perform on the agreement and Cargill prevented it from doing so.

Contract Number 26714:

According to Cargill, the parties also entered into a second contract (number 26714) on March 24, 2006. This contract provided for the sale of 10,000 bushels of U.S. No. 2 soft red winter wheat at the price of $3.99 per bushel for delivery during the May-June 2008 period. Cargill claimed that Philen failed to perform on this contract; Cargill, therefore, said it canceled the contract on June 30, 2008. Cargill claimed a loss of $44,450 as a result of Philen's alleged breach of this contract.

Philen denied the existence of this contract, claiming that Cargill's handwritten records showed that this contract was with a farm identified as *"Pharl."* Philen further alleged that the document submitted by Cargill as contract number 26714 – which identified "Philen Farm Partnership" as the contracting party – had been mailed improperly and was never signed or agreed to by Philen. Philen argued that Cargill failed to adequately notify it of this contract, as it was mailed to an incorrect address and never received by Philen.

Philen also contended that neither contract number 26714 or 26593 was subject to NGFA Arbitration on the grounds that there was no signed written agreement to arbitrate. In addition, Philen argued that the page in both Cargill's contracts that contained the "Purchase Terms" – including the arbitration provision, which Cargill submitted with its arguments in this case – had not been included with the original contract between the parties and, therefore, was fraudulent. Philen's claims included a cross-complaint against Cargill for fraud and unfair trade practices.

The Decision

The arbitrators closely considered the arguments and evidence presented by both parties.

With respect to questions concerning whether this case was subject to NGFA Arbitration, the arbitrators noted that the federal court had determined that the parties made a valid agreement to arbitrate these disputes arising out of the soybean contract and the formation of the wheat contract.

The arbitrators determined that both contracts were valid and that Cargill acted in accordance with the NGFA Grain Trade Rules and industry standards and trade practices. The evidence presented by the parties did not support Philen's allegations that its non-performance under the soybean contract was the result of closures at Cargill's facilities, rather than the significant increase in market prices. Nor did the evidence submitted to the arbitrators support Philen's contention that the wheat contract did not exist or that it had been misdelivered.

The arbitrators, therefore, concluded that Philen failed to perform according to the terms of either contract.

With respect to damages to be assessed for the soybean Premium Offer Contract, however, the arbitrators concluded that the correct date for contract cancellation was Oct. 31, 2007, rather than the Dec. 28, 2007 date applied by Cargill. The arbitrators determined that Cargill otherwise acted in accordance with the NGFA Trade Rules and with industry standards and trade practice by cancelling the contract pursuant to NGFA Grain Trade Rule 28(A) [Seller's Non-Performance], which states, in relevant part, the following:

> 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.

The Award

The arbitrators awarded $39,075 to Cargill for damages under contract number 26593, based upon cancellation of the 10,000 bushel soybean contract (at the contracted price of $6.35 per bushel) using the Oct.31, 2007 closing price of $10.2575 per bushel.

The arbitrators awarded $44,450 to Cargill for damages under contract number 26714 based upon cancellation of the 10,000 bushel wheat contract (at the contracted price of $3.99 per bushel) using the $8.435 per bushel closing price.

Therefore, the total award due to Cargill was $83,525 for the cancellation of the two contracts. The arbitrators declined to award attorney's fees or interest based upon the circumstances and facts of this case as they were demonstrated to the arbitrators by the parties.

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

Carl Schwinke, *Chair*
Vice President, Grain Supply
Siemer Milling Company
Teutopolis, Ill.

Chris Breedlove
General Manager
Willacy Co-op
Raymondville, Texas

Paul Katovich
Assistant Manager
Central Washington Grain Growers Inc.
Waterville, Wash.