National Grain and Feed Association
Arbitration Decision
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July 29, 2010

Arbitration Case Number 2390

Plaintiff: **James Valley Grain, LLC, Oakes, N.D.**

Defendant: **Loren David, Lidgerwood, N.D.**

Statement of the Case

This arbitration case involved a dispute over the cancellation of two soybean contracts between James Valley Grain, LLC (JVG) and Loren David (David).

JVG and David entered into two hedge-to-arrive contracts in early July 2007 for delivery of soybeans, each with a delivery period of July 2008 and a pricing deadline of June 30, 2008. Futures prices were set based upon the Chicago Board of Trade (CBOT) soybean futures contract. The contracts involved were:

1) James Valley purchase contract number 222-HT04241 for 30,000 bushels at a July 2008 CBOT futures price of $9.16 per bushel, dated July 2, 2007.

2) James Valley purchase contract number 222-HT04246 for 70,000 bushels at a July 2008 CBOT futures price of $9.20 per bushel, dated July 9, 2007.

Both contracts were signed by JVG the day they were written and were signed by David the next day. Both contracts referenced NGFA Trade Rules as the governing rules for the contract. Neither party disputed the existence of these two contracts.

On April 9, 2008, JVG left a voicemail message for David to determine whether he wished to set the basis for these two soybean contracts, or whether he wished to start delivery on these two contracts earlier than the July delivery dates stated in the contracts.

On April 14, 2008, JVG received a letter from David dated April 9, 2008, indicating that he did not intend to deliver any soybeans against these contracts. David's letter claimed that he had cancelled these soybean contracts with JVG in a letter mailed on Sept. 1, 2007. He enclosed a copy of the Sept. 1, 2007 letter, along with the April 9, 2008 letter responding to JVG's phone call regarding pricing and delivery of the contracts.

Upon receipt of David's letter on April 14, 2008, JVG immediately cancelled both soybean contracts and sent David an invoice for the cancellation. JVG claimed a market loss on both of these contracts of $458,200, and charged a cancellation fee of $25,000 (or 25 cents per bushel) for a total cancellation cost of $483,200. JVG stated that it never was notified prior to April 14 of David's intention to cancel the two soybean contracts.

David filed a counterclaim against JVG, stating that if JVG had cancelled the two soybean contracts on Sept. 6, 2007, as he purportedly requested, JVG would have owed him $131,300 on the cancellation of the two contracts based upon the market value for that day.

David presented a U.S. Postal Service (USPS) delivery receipt to support his claim that he had requested cancellation of these contracts in September 2007. However, the sender of the envelope was Casey David, David's son. The delivery receipt showed that the mail sent by Casey David was signed for on Sept. 5, 2007. David claimed that he had sent his cancellation letter along with a letter that his son sent regarding a cancellation charge on a previously cancelled corn contract. JVG stated that the contents of that envelope, sent on Sept. 1, 2007, only related to cancellation of Casey David's corn contract and had nothing whatsoever to do with any cancellation of David's soybean contracts.

The Decision

The arbitrators were faced with several questions in reviewing this case. However, the main question to be addressed was if mutual and confirmed agreement to cancel David's soybean contracts was established between JVG and David prior to April 14, 2008.

David claimed that he cancelled both soybean contracts by phone in August 2007 and that he confirmed in writing on Sept. 1, 2007 the cancellation of both contracts the following week. However, the letter he claimed to have sent on Sept. 1, 2007 never mentioned that a phone call was made in August to cancel these contracts. In addition, the letter David claimed to have sent indicated that he wanted the contracts cancelled the following week. This would have contradicted his claim that he already had made a phone call cancelling these contracts.

The arbitrators concluded that the USPS delivery receipt for the corn contract cancellation letter sent from Casey David was not sufficient proof that another letter was enclosed from David cancelling his soybean contracts.

There also was no evidence of a phone call being made by David in August 2007 to cancel the soybean contracts. David's affidavit stated that he told an employee of JVG to "cancel all contracts, when they were profitable." This was not a specific request to cancel contracts either on a specific date or at a specific price.

The arbitrators determined that NGFA Grain Trade Rule 28(A) [Seller's Non-Performance] and Rule 4 [Alteration of Contract] applied in this matter. Rule 28(A) applied since it required the seller, David, to provide clear written instruction of his desire to cancel the contracts. Meanwhile, Rule 4 applied because any desired alteration of the contract was required to have been agreed upon mutually by both buyer and seller, and immediately confirmed in writing. Neither of these rules was followed by the seller, David.

David claimed that JVG would owe him $131,300 if it had cancelled the soybean contracts on Sept. 6, 2007, the day after receipt of his alleged cancellation letter. The arbitrators dismissed this claim, since calculations for this claimed loss were based upon the Minneapolis daily cash grain prices instead of the CBOT July 2008 soybean futures contract prices upon which the original contracts were written. If the CBOT soybean futures contract closing grain prices for Sept. 6 had been used, there still would have been a market loss on the contract cancellation for which David would have been liable.

The arbitrators relied upon David's inconsistent statements made in this arbitration case, as well as the fact that JVG only discovered that David wanted to cancel these contracts in the normal course of conducting business, and that JVG would have received no benefit from keeping these hedge-to-arrive contracts on its books if it indeed had been notified properly by David in September 2007 that he wanted to cancel these contracts.

The arbitrators concluded, upon review of all of the facts, that there was never a mutual agreement between the parties prior to April 14, 2008 to cancel the soybean contracts.

The Award

Based upon the determination that there was no mutual agreement to cancel the contracts prior to JVG's receipt of David's letter on April 14, 2008, the arbitrators found in favor of JVG, and, therefore, denied David's counterclaim. The arbitrators agreed with JVG's calculation of damages and cancellation fees, as follows:

Contract number 222-HT04241:
Contract futures value: $9.16 per bushel
Cancellation futures value: 13.77 per bushel
Market difference of $4.61 per bushel x 30,000 bushels = $138,300

Contract number 222-HT04246:
Contract futures value: $9.20 per bushel
Cancellation futures value: 13.77 per bushel
Market difference of $4.57 per bushel x 70,000 bushels = $319,900

Total market difference due JVG: $458,200

JVG's posted cancellation fee as of April 14, 2008 was 25 cents per bu. x 100,000 bushels = $25,000

Therefore, the arbitrators unanimously awarded James Valley Grain damages of $458,200 on the two contracts, cancellation fees of $25,000, interest of 3.25 percent from April 14, 2008 until paid, as well as legal fees and arbitration filing fees of $3,316 sought by the plaintiff.

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

Richard L. Anderson, *Chair*
Grain Merchandiser
Ag Partners Co-op
Goodhue, Minn.

Morey Cade
Director of Marketing and Operations
West Plains Company
Kansas City, Mo.

Michele Ohnemus
Grain Merchandiser
MFA Incorporated
Columbia, Mo.