National Grain and Feed Association

Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

July 1, 2010

Arbitration Case Number 2403

Plaintiff: **DeBruce Grain de México S.A. de C.V., Zona Jurica, Querétaro, México**

Defendant: **Forrajera San Rafael S.A. de C.V., San Juan de los Lagos, Jalisco, México**

Statement of the Case

DeBruce Grain De Mexico, S.A. DE C.V. and Forrajera San Rafael, S.A. DE C.V. began working on a corn contract in September of 2008, selling two delivery periods November/December 2008, delivered by truck, both consisting of 3,048 metric tons each. San Rafael claimed no contract existed.

Based on all information supplied to the arbitration committee, the arbitration committee decided unanimously that DeBruce Grain and San Rafael indeed entered into an agreement consisting of two contracts for corn.

The first contract (SC1303369) dated Sept. 30, 2008, was for 3,048 metric tons of corn. The delivery period was Nov. 1, 2008 through Nov. 30, 2008 at $275 USD per metric ton delivered by truck to SAN JUAN DE LOS LAGOS, JAL. The second contract (SC1303370) also entered into on Sept. 30, 2008, was for 3,048.00 metric tons of com at $275 USD per metric ton delivered by truck to SAN JUAN DE LOS LAGOS, JAL; delivery period Dec. 1, 2008 through Dec. 31, 2008.

In December 2008, San Rafael tried to negotiate new terms for the first contract that the committee agrees was in default. Discussions that took place between DeBruce Grain and San Rafael from December 2008 through May 15, 2009 with San Rafael trying to purchase more com under market value with delivery periods all the way through April 2009. The parties could not agree to agree, and a failure to perform or breach of contract occurred by San Rafael.

DeBruce consequently submitted this case to the NGFA for arbitration due to the breach of contract. Although the arbitration committee did not have access to hedge statements, approximate market values were determined by the committee to be reasonable. Two of the three arbitration committee members traded Mexico corn values, so they were aware of the freight, Peso conversion rate and the market spread during this time-period.

The Decision

San Rafael claims no contract was entered into because DeBruce Grain did not provide proof of a signed contract. In Mexico, it was discussed that if a signed contract is not available, no contract exists. However, DeBruce, in fact, had a signed contract thereby creating the contractual obligation.

The committee discussed the Answers and Counterclaims which did involve one other contract, but made its decision on the two com contracts at hand. There were distillers grain (DDG) contracts also used in the discussions of both parties. The arbitration committee only made decisions on Contracts SCl303369 and SC1303370 as originally filed with the NGFA. The Surrebuttal of San Rafael also claimed a loss from DeBruce, which contradicted their initial statement stating no contract existed.

The calculations for monetary loss by San Rafael were used to prove the calculations of loss by DeBruce Grain to see if a reasonable value was utilized. Again, no hedge statements were provided, so market values other than what was provided to the committee were used so the committee could come to a decision on damages. As for "cash gains" that San Rafael referred to in the calculations, these were due to the fact that 2008 hedges were placed into a very high-priced futures scenario. Then one year and three months later, the hedge lifted created the "hedge gain," not cash gains as San Rafael alluded to in its Surrebuttal. The committee discussed the information provided by San Rafael regarding the "Cash Gain" claimed. However, the committee decided that hedging in very high-priced futures positions creates a "hedge gain" when the futures positions drop, it creates a "hedge gain." This is not a cash gain; it only off-sets the high flat prices lost on grain that no longer are considered sold/hedged; hence an equal off-setting position, less basis gain or loss.

Special Notes: San Rafael's Surrebuttal (page 11, point 35) suggested that there was not enough proof that DeBruce had bought back the futures (lifted the hedge for 48 contracts) at the time of sale (Sept. 30, 2008), alluding that DeBruce could have benefited from that, basically doubling the gains, one from the futures and one from the cancellation cash price. The evidence shows that DeBruce did lift the hedge at the time of sale and put back the hedge (sold the futures) at the time of cancellation (December 3), creating a loss in futures of $1.6425/bushel, on top of the market basis spread of $0.1128/bushel.

San Rafael and DeBruce met in December of 2008, with DeBruce demanding payments and acceptance of deliveries of contracts. San Rafael began asking for contract modifications to contracts considered in default. San Rafael requested more corn, cheaper conversion rates between the U.S. Dollar and Mexican Pesos and lower contract prices. DeBruce did discuss extending delivery periods and a fair market value to cancel the existing contracts in default. No agreements were reached. On December 2, San Rafael notified DeBruce that it would not honor the contracts. This call initiated the buy-in that was done by DeBruce Grain. DeBruce followed all proper procedures for Contract Cancellation per NGFA Grain Trade Rule 28B and C. The committee was unanimous this was done according to the National Grain and Feed Association Trade Rules. All statements discussed or made by the parties were read by the committee; it all led the committee to the original claim regarding two com contracts and the decision made was strictly for those two contracts brought to the NGFA for arbitration.

The committee was unanimous that San Rafael was in breach of contract and DeBruce Grain is due damages.

The Award

Based on the information provided to the arbitration committee, the committee did the calculations for damages due DeBruce Grain and has unanimously awarded the following:

- Contract SC1303369 - $210,647.28
- Contract SC1303370 - $210,647.28
- Reimbursement of NGFA fees - $3,021.32
- Interest at a rate of 3.25%, per Section 8(M) of NGFA Arbitration Rules, from May 15, 2009 until paid.
- Reasonable attorney fees/costs - $10,000 estimate was determined reasonable by the committee.

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

Timothy Jimenez, *Chair*
General Manager
Farmers Cooperative Association
Brule, Neb.

Miguel Davalos
Senior Merchant
Attebury Grain, Inc.
Amarillo, Texas.

Victor Pino
Director General
Bunge México
Col. San Miguel Capultepec, D.F., México