National Grain and Feed Association

Arbitration Decision

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March 26, 2010

Arbitration Case Number 2409

Plaintiff: **Sunray Cooperative, Sunray, Texas**

Defendant: **Ron McKay Farms LLC, Dalhart, Texas**

Statement of the Case

Sunray Cooperative (Sunray) of Sunray, Texas, and Ron McKay Farms LLC (McKay Farms) of Dalhart, Texas entered into an oral contract for delivery of 15,000 bushels of U.S. No. 2 yellow corn during the 2008 harvest (by Nov. 15, 2008) at the fair market price.

The contract was confirmed in writing by Sunray and signed by Ron McKay of McKay Farms on Aug. 29, 2009, and then was assigned Sunray purchase contract number PC80133.

McKay Farms previously had failed to fully deliver corn to Sunray under contracts during the 2006 harvest. These contracts subsequently were rolled to 2007 delivery, and then finally rolled into contract number PC80133 for delivery during the fall harvest periods of 2008-2011. As an aside, the original contract for harvest 2006, and the "rolled" contract for delivery harvest 2007 also are in dispute. However, this case solely involves the dispute associated with Sunray purchase contract number PC80122, dated Aug. 28, 2008, as defined by its contractual terms, conditions and details.

Upon discovering that McKay Farms was in contract default on Nov. 15, 2008 (the end of the contractual delivery period), Sunray contacted McKay Farms in an attempt to take delivery of the contracted grain. This action was confirmed by Exhibit "C" of Sunray's first argument, which consisted of a letter from Sunray's counsel requesting full delivery from McKay Farms, along with the certified mail return receipt for the letter.

The Decision

The arbitrators concluded, based upon the evidence submitted, that Sunray and McKay Farms did in fact enter into a binding contract on Aug. 28, 2008. This was a verbal contract that was confirmed in writing on Aug. 29 and which was signed by both the buyer and seller.

The arbitrators also concluded that Sunray exercised reasonable due diligence to allow for performance on the purchase contract over the course of multiple crop years. Sunray exercised its right to mitigate damages and closed out the purchase contract at fair market value on Nov. 17, 2008, in accordance with paragraph (3) of NGFA Grain Trade Rule 28(A) [Seller's Non-Performance], which states that, once the seller notifies the buyer that it will not be able to perform on a contract, the buyer may at once elect to *"cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day."* The arbitrators concluded that this mitigation of damages totaled $15,750 – the exact difference between contract price and market price on Nov. 15, 2008.

The arbitrators found that any and all counterclaims by McKay Farms regarding its ability to fulfill sales commitments were unrelated to the contract terms, conditions, obligations and ultimate implied liabilities as related to Sunray purchase contract number PC80133.

The Award

The arbitrators awarded the following damages:

1. Sunray Cooperative was awarded judgment against Ron McKay Farms LLC for $15,750.

2. Sunray Cooperative was awarded the arbitration fee of $557.31, plus interest at a rate of 6% per annum, pursuant to Arbitration Rule 8(m), to accrue from Feb. 5, 2009 until the award is paid in full.

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

Cameron Gregg, *Chair*
Vice President, Western Trade Group
Interstate Commodities Inc.
Omaha, Neb.

Mark Heil
General Manager
Prairie Central Cooperative Inc.
Chenoa, Ill.

Gerald McAfee
Marketing Specialist
West Central Cooperative
Ralston, Iowa