



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

September 8, 2011

Arbitration Case Number 2457

Plaintiff: Bunge North America Inc., St. Louis, Mo.

Defendant: Louis Sanders, Mound Bayou, Miss.

Statement of the Case

Bunge North America Inc. (Bunge) requested a judgment in the amount of \$3,202.58 for market difference and cancellation fees associated with the alleged nonperformance on wheat contracts with Louis Sanders (Sanders) during the 2008 crop year.

Bunge claimed that Sanders defaulted on the contracts, forcing Bunge to cancel them and thereby making Sanders liable for the market difference at the time of cancellation. Sanders claimed that all liabilities owed to Bunge had been satisfied.

All of the wheat contracts were agreed to and signed by both parties, as listed below:

Date	Contract #	Bushels	Commodity	Contract type	futures price	Delivery
23-Oct-06	47926	2,500	# 2 Soft red winter wheat	hedge to arrive	\$4.55 July 2008 CBOT	5/1 - 6/30/2008
22-Jan-07	48061	1,000	# 2 Soft red winter wheat	hedge to arrive	\$4.845 July 2008 CBOT	5/1 - 6/30/2008
27-Feb-07	48099	2,500	# 2 Soft red winter wheat	hedge to arrive	\$5.075 July 2008 CBOT	5/1 - 6/30/2008
2-Mar-07	48103	1,000	# 2 Soft red winter wheat	hedge to arrive	\$4.94 July 2008 CBOT	5/1 - 6/30/2008

Bunge stated that on June 16, 2008, the then-assistant manager of its Hurricane Point Miss., elevator called Sanders to determine when he would be delivering the wheat to fulfill his contracts. The assistant manager's affidavit stated that during that conversation, Sanders advised him that he would not be delivering wheat pursuant to the contracts. Bunge also claimed that Sanders was advised that if he was not going to deliver the wheat on the contracts to Bunge, that Bunge would cancel the contracts. Bunge further alleged that Sanders responded that, "Bunge could cancel the Wheat Contracts, but that he 'was not going to pay Bunge the market difference.'" Bunge also stated that its assistant manager explained to Sanders that he would be responsible for any money owed as a result of the cancellations, to which Sanders allegedly did not reply and hung up the phone. Following this conversation on June 16, 2008, Bunge cancelled the wheat contracts.

On June 16, 2008 the July 2008 wheat futures prices ranged from \$8.99 to \$9.385 per bushel. Bunge used a CBOT July 2008 wheat futures price of \$8.99 per bushel for purposes of calculating the market difference owed by Sanders on the wheat contracts. Bunge claimed the resulting calculated market difference and cancellation fees owed by Sanders totaled \$29,782.50. Bunge then prepared four confirmations of change in contract (cancellations), and mailed them to Sanders via certified mail, along with a letter and invoice for the market difference and cancellation fees owed Bunge. The certified letter receipt was signed for and received on June 21, 2008.

On June 29, 2009, Bunge submitted its Complaint for Arbitration before the NGFA over the amount allegedly owed by Sanders on the wheat contract cancellations.

Subsequently, Bunge stated that on or about June 30, 2009, Sanders called Bunge's Rosedale, Miss., elevator manager to discuss the amount he owed Bunge for the cancellation of the wheat contracts. Bunge claimed that during this discussion, Sanders agreed to apply certain wheat in storage and other amounts to the market difference owed to Bunge on the wheat contracts. Bunge calculated that the proceeds from the wheat in storage and other amounts totaled a credit of \$26,579.92, which was applied against the amount owed Bunge by Sanders. The result was a balance of \$3,202.58 as the amount of the claim, Bunge stated.

In his written counterclaim to the plaintiff's argument, Sanders did not deny the existence of any of the wheat contracts. But Sanders did deny that on June 16, 2008, he told Bunge to cancel the contracts or otherwise indicated a desire to cancel the contracts. Rather, he

claimed that the wheat contracts unilaterally were cancelled by Bunge prior to the contract expiration date of June 30, 2008. As a result, Sanders maintained he had not defaulted on the contract as of June 16, 2008 when the contracts were canceled by Bunge.

Sanders also claimed that Bunge did not timely submit its complaint for arbitration because the contracts were canceled on June 16, 2008 and Bunge did not file its complaint until June 29, 2009, more than a year later. Pursuant to NGFA Arbitration Rules Section 3(d) [Jurisdiction], “any disputed matter proposed for arbitration must be filed with the National Secretary within twelve (12) months after a claim arises, or within twelve (12) months after the expiration date for performance of the contract, whichever occurs last.” Sanders claimed the date Bunge canceled the contract, June 16,

2008, was the only date from which the claim could arise because the cancellation of the contract also was the expiration date for performance on the contract. Sanders maintained that the contract no longer existed after it was canceled on that date.

On these grounds, Sanders requested that the complaint against him be dismissed, with costs and attorney fees assessed against the plaintiff. In Sanders’ answer to the plaintiff’s first argument and counter claim, he stated that, “*Bunge Inc. without authorization applied proceeds derived from canceled contracts... toward the alleged debt that Louis Sanders owed to Bunge, Inc.*” Sanders requested that Bunge be ordered to return to Sanders \$24,315.36, plus interest and attorney fees.

The Decision

The arbitrators found that the wheat contracts were valid, as all were agreed to by both parties. Further, the arbitrators also concurred that the contracts were written with June 30, 2008 as the due date for all deliveries. Both Bunge and Sanders agreed that a conversation occurred on June 16, 2008 regarding the delivery of the wheat. Sanders argued that he had not defaulted on the wheat contracts on June 16, 2008, when Bunge unilaterally canceled them, stating, “*I believed that I had until June 30, 2008 to perform the contracts.*” By Bunge’s own statement, the contracts were canceled on June 16, 2008.

However, NGFA Grain Trade Rule 28 [Failure to Perform] reads, in relevant part:

- (A) Sellers Non-Performance** 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 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 arbitrators found that Sanders had not defaulted on the wheat contracts on June 16, 2008—the date Bunge unilaterally canceled the contracts. Rather, the arbitrators determined that Sanders had until June 30, 2008 to perform on the contracts and Bunge prematurely and improperly canceled them on June 16, 2008, prior to the date of performance on the contracts. Since Bunge unilaterally canceled the contracts on June 16, 2008, from that date forward there was no future performance required since none of the contracts existed after that date. Because the contracts no longer existed after June 16, 2008, the June 30, 2008 expiration date for contract performance was not applicable in determining the 12-month period of time to file a complaint.

The arbitrators concluded that per NGFA Arbitration Rules Section 3(d), Bunge’s complaint should have been filed on or before June 16, 2009 for it to be a timely filing. Bunge did not file its complaint until June 29, 2009. The arbitrators therefore granted Sanders’ request to dismiss the case against him, and declined to consider Bunge’s claim or Sanders’ counterclaim.

The Award

The arbitrators agreed with Sanders that Bunge filed its arbitration complaint beyond the proper filing date as specified in the NGFA Arbitration Rules. The arbitrators determined that the matter was therefore ineligible for arbitration by the National Grain and Feed Association. Consequently no award to either party will be considered.

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

Dan Treinen, Chair
Vice President
Columbia Grain, Inc.
Great Falls, Mont.

Doug Biswell
Merchandiser
Farmers Cooperative Association
Manhattan, Kan.

Dan Wegner
Commodities Manager
United Wisconsin Grain Producers LLC
Friesland, Wis.