



National Grain and Feed Association Arbitration Decision

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February 6, 2014

CASE NUMBER 2652

Plaintiff: Wheatfield Grain, Crescent City, Illinois

Defendant: M. Miner Farms Inc. and H. Miner Farms Inc., Watseka, Illinois

STATEMENT OF THE CASE

This dispute involved two contracts between the buyer, Wheatfield Grain (Wheatfield), and the sellers, M. Miner Farms Inc. and H. Miner Farms Inc. (Miners), for a disputed quantity of soybeans to be delivered to Wheatfield's location in Crescent City, Ill.

Wheatfield claimed that on July 2, 2012, an employee of the Miners telephoned Wheatfield and, during this conversation, the parties entered into two cash contracts for the future delivery of a total of 10,000 bushels of soybeans. According to Wheatfield, the parties agreed that the Miners would sell 5,000 bushels of soybeans under each of the two contracts at \$14.07-per bushel and deliver them in September-November 2012. Wheatfield stated that it then sold futures on the same day on the Chicago Board of Trade to cover the two contracts as a hedged position. Wheatfield confirmed the agreements between the parties with written purchase contracts numbered CC00004595 and CC00004596 that each provided for the delivery of 5,000 bushels of soybeans. On the next day – July 3, 2012 – the Miners' employee visited Wheatfield's elevator and reviewed and signed both contract confirmations.

The Miners stated that after their employee returned with the contract confirmations, they informed Wheatfield by telephone that the quantities indicated in the contracts were incorrect in that the agreement should have been for 500 bushels under each contract for a total of 1,000 bushels – not 10,000 bushels. The Miners argued that this discrepancy in the quantity terms was a mutual error which Wheatfield improperly refused to "correct" in the contracts. The Miners also referred to paragraph 2 of the contracts, which stated:

The above statements are understood to be an accurate statement of the terms of this contract. Failure by the seller to inform the buyer within 24 hours of receipt of contract of any discrepancies shall be construed to be full acceptance thereof. No modification or amendment of this contract shall be valid unless agreed to by both parties and confirmed in writing.

According to the Miners, they were consequently entitled to dispute the quantity terms in the contracts by informing Wheatfield of their objections to the terms within 24-hours of their employee having signed the contracts. The Miners' position was that the contracts should be amended without cost or penalty to them because they had fulfilled a "condition precedent" under the contracts.

Wheatfield responded that it could not simply agree to rescind or amend the contracts as requested because Wheatfield had already sold futures based upon the contracts as confirmed between the parties. The parties disputed whether Wheatfield informed the Miners that they could buy-out of the contracts at that point.

On Sept. 6, 2012, the Miners filed a lawsuit to rescind the contracts and seek a restraining order against Wheatfield in the state circuit court for Iroquois County, Illinois. Wheatfield interpreted the statements in the Miners' court filings as notification of their intent to not deliver under the contracts. Wheatfield then cancelled the contracts based upon fair market value prices. Wheatfield claimed damages under the contracts for the difference between the original contract price and the fair market value on the date the contracts were cancelled for a total of \$27,600. Wheatfield further claimed damages in the amount of \$3,200 to recover "lost profits" from the Miners' default under the contracts at 32-cents per bushel. Wheatfield also requested \$7,724 in attorney's fees. Wheatfield's total claim for damages amounted to \$38,524 plus interest.

The Miners submitted a counterclaim against Wheatfield in these arbitration proceedings. The Miners argued that because of Wheatfield's claims against them, they had been unable to forward contract for the sale of additional soybeans to another buyer at the price of \$17.35 per bushel. The Miners consequently claimed loss of income in the amount of \$121,450. They also claimed \$14,675 in attorney's fees for the state court action and \$8,640 for the arbitration proceedings.

THE DECISION

The arbitrators determined that the two contracts in this dispute were valid agreements between the parties. Both Wheatfield and the Miners signed the contract confirmations on July 3, 2012. Consistent with normal trade practice, the oral communication by telephone represented the trades between the buyer and sellers at the time they were agreed upon. The subsequent written contracts confirmed the offers and acceptance of those offers that were willingly agreed upon between the buyer and sellers. As provided in NGFA Grain Trade Rules 1 and 3, the parties orally discussed the terms of the trades between them and then detailed the specifications of the contracts through written confirmations. NGFA Grain Trade Rule 3(A) specifically provides that the parties confirm an oral agreement in writing. Paragraph B of Rule 3 provides that if only one party sends a written confirmation then that confirmation is binding upon both parties unless the other party immediately notifies of any disagreements with the confirmation.

Consequently, the arbitrators determined it was not required that the Miners sign the contract confirmations issued by Wheatfield to make them valid and binding, but that the Miners' employee did sign the confirmations further enforced the parties' responsibilities under the terms of the contracts. The Miners did not object to the terms of the confirmations of the contracts. To the contrary, the Miners signed them.

The arbitrators also concluded that the provision under paragraph 2 in the contracts that relates to notification by the sellers of discrepancies in the confirmations within 24 hours was not intended to provide an unconditional exit for the sellers from contracts that were already signed. Such contract language is standard terminology in the trade and is intended to address the enforceability of a contract in the case where a party is silent and does not sign or acknowledge the contract confirmation. Paragraph 2 of the contracts is consistent with NGFA Grain Trade Rule 3, which provides that a party in receipt of a written confirmation of an oral agreement is obligated to immediately provide notice of any objections or disagreements with the terms of a confirmation. However, the obligation to object to an unsigned confirmation upon receipt does not also permit a party to rescind or refute an agreement after it has been signed. The arbitrators decided that the contractual language in this case did not create a "condition precedent" in which the contract became enforceable only after the parties performed certain actions. In this case, an employee of the Miners (who they identified as their "agent" in the arbitration filings) had reviewed and signed the contract confirmations, which further established the validity and enforceability of those contracts.

With respect to the Miners' claims related to amending of the contracts between the parties, the arbitrators referred to NGFA Grain Trade Rule 4 [Alteration of Contract], which states as follows:

The specifications of a contract cannot be altered or amended without the express consent of both the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by written communication by both parties.

Based upon the evidence and materials submitted by the parties in this case, the arbitrators concluded that the parties never mutually agreed to amend the quantity terms expressed in the contracts. The parties discussed the Miners' interest in changing the quantity terms from 10,000 to 1,000 bushels and the additional terms that might apply for Wheatfield to agree to that amendment. However, the parties did not agree to change the contracts. Accordingly, the arbitrators determined it would not have been appropriate for Wheatfield to unilaterally alter or cancel the contracts until it established with reasonable certainty that the Miners would not be performing under the contracts.

As provided in NGFA Grain Trade Rule 28 [Failure to Perform], once a buyer becomes aware of the seller's non-performance on a contract it becomes the buyer's responsibility to buy-in or cancel the defaulted portion of the contract. The arbitrators concluded that in this case when Wheatfield received the submissions related to the lawsuit in state court filed by the Miners, Wheatfield acted properly by cancelling the contracts based on the close of the market on the next business day.

Therefore, the arbitrators denied the Miners' claims for damages. The arbitrators awarded \$27,600 to Wheatfield for damages, which represented the difference of \$2.76-per bushel between the contract price and fair market value price on the date of cancellation. The arbitrators denied Wheatfield's claim for legal costs. The arbitrators also denied Wheatfield's claim for full profits lost on the bushels defaulted under the contracts. Instead, the arbitrators limited this aspect of the award to Wheatfield to the customary 10-cents per bushel cancellation fee. The arbitrators also denied Wheatfield's claim for interest.

THE AWARD

The arbitrators ruled in favor of Wheatfield in the amount of \$28,600. No interest was awarded in this case.

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

Chad Nagel, *Chair*
Manager of Trading
Nagel Farm Services Inc.
Wye Mills, Maryland

Craig Hebrink
President/ CEO
Co-op Country Farmers Elevator
Renville, Minnesota

Todd Phillips
Vice President,
Grain & Risk Management
Heartland Co-op
West Des Moines, Iowa