Arbitration Decision
National Grain and Feed Association

February 26, 1998

Arbitration Case Number 1814©

Plaintiff: Farmers Grain Dealers Inc., Perrysburg, Ohio

Defendant: American Health and Nutrition, Ann Arbor, Mich.

Statement of Case

On May 28, 1996 and June 18, 1996, Farmers Grain Dealers Inc., the plaintiff, entered into contracts for sale to American Health and Nutrition, the defendant, a total of 7,300 bushels of "No Chemical Vinton 81 Soybeans."

The contracts were priced at $13.50 per bushel f.o.b. Clinton, Wis. The plaintiff issued contract numbers 5973 and 5980, and sent copies to the defendant to confirm the sales.[1] As far as the arbitration committee could determine, the defendant did not issue a written confirmation of its purchase of the soybeans. Farmers Grain Dealers Inc. said it did not receive any objection to the terms of the sale from American Health and Nutrition, and the latter did not dispute the terms of the contracts in its written statements to the arbitration committee.

Farmers Grain Dealers Inc. acquired the soybeans to fulfill these two contracts from the DeLong Co. Inc. (DeLong), Clinton, Wis. The soybeans were processed, bagged and loaded onto containers at DeLong's facilities between June 12 and June 18, 1996. American Health and Nutrition took delivery of 7,274 bushels of soybeans at the DeLong plant, whereupon Farmers Grain Dealers Inc. invoiced American Health and Nutrition in the amount of $98,201.06 (7,274 bushels at $13.50 per bushel).

The plaintiff claimed that American Health and Nutrition had not paid for the soybeans. The defendant claimed that the soybeans covered under these contracts and a previous contract were of poor quality and did not meet the terms of the contracts between the two parties. American Health and Nutrition indicated that it had received a sample of the lot of soybeans to be purchased, and that the actual shipment in fulfillment of the contracts did not meet the same quality standards as the sample it had inspected. Therefore, American Health and Nutrition said it refused to make payment to Farmers Grain Dealers Inc. until there was an agreement on the issue of quality and the costs associated with selling the soybeans to a party that was willing to accept them.

Farmers Grain Dealers Inc. claimed it was due $98,201.06, plus reasonable interest calculated from July 12, 1996 until paid.

The Decision

The arbitration committee found the contract terms called for the shipment of "No Chemical Vinton 81 Soybeans," with origin grades to govern. The written contracts issued by Farmers Grain Dealers Inc. were the only written confirmations. These confirmations did not note any specific/guaranteed grade factors or a requirement for a "sample" sale.

[1] The Farmers Grain Dealers Inc. contracts expressly provided that the sales were "made subject to the trade rules of the National Grain and Feed Association." Likewise, the contracts provided that all disputes would be resolved through NGFA arbitration.

The arbitration committee noted that NGFA Grain Trade Rule 6(a) calls upon **both** the buyer and seller to send written confirmation to one another setting forth the specifications as agreed upon in the original articles of the trade. American Health and Nutrition failed to send a written confirmation to Farmers Grain Dealers Inc. If American Health and Nutrition's perception of the agreement and terms of the trade were for certain quality factors, it should have issued a purchase confirmation with the terms as it understood them. Alternatively, at the very least, American Health and Nutrition should have objected to the terms of Farmers Grain Dealers' confirmation of sale at the time it was received. NGFA Grain Trade Rule 6(c) states, "If either Buyer or Seller fails to send out confirmation, the confirmation sent out by the other party will be binding upon both in case of any dispute, unless confirming party has been immediately notified by nonconfirming party, as described in 6(a), of any disagreement with the confirmation received." Since the defendant, American Health and Nutrition, failed to send a written confirmation or object to Farmers Grain Dealers' confirmation, the confirmation from Farmers Grain Dealers Inc. was binding.

In addition, NGFA Grain Trade Rule 1(c) requires the kind and grade of grain to be included in the articles of the trade. The plaintiff's confirmation only called for "No Chemical Vinton 81 Soybeans" to apply.

The arbitration committee was not presented with any other documentation to support American Health and Nutrition's claim that there was an agreement to supply a particular quality of soybeans on the contracts.

Therefore, the arbitration committee found in favor of the plaintiff, Farmers Grain Dealers Inc., in the amount of $98,201.06, plus interest at a rate of 8.375 percent from July 12, 1996 until paid by American Health and Nutrition.

Counterclaim by American Health and Nutrition

American Health and Nutrition claimed it had not received the quality of soybeans it was entitled to under the terms of the three contracts it entered into with Farmers Grain Dealers Inc. American Health and Nutrition stated that it purchased soybeans from Farmers Grain Dealers Inc. after inspecting a sample of soybeans provided by the plaintiff in April 1996. Subsequently, American Health and Nutrition purchased 7,300 bushels of "no chemical Vinton 81 soybeans" from the plaintiff on May 10, 1996. This transaction was confirmed by Farmers Grain Dealers Inc. in its confirmation of sale number 5960.

American Health and Nutrition took delivery of the soybeans covered under this agreement, and was invoiced and paid by Farmers Grain Dealers Inc. for these soybeans on June 7, 1996 and June 14, 1996. American Health and Nutrition, in turn claimed to have sold these soybeans to Okura & Company (America) Ltd. ("Okura") for export to Japan.

It was after this original shipment that American Health and Nutrition bought another 7,300 bushels of "no chemical Vinton 81 soybeans," confirmed by Farmers Grain Dealers' confirmation numbers 5973 and 5980 (contracts referenced in the original claim by the plaintiff).

On July 1, 1996 Okura sent a facsimile to American Health and Nutrition advising that it had opened the first 10 containers and found them to be of poor quality with "cracked seed coats and discoloration found throughout." Okura indicated it did not want American Health and Nutrition to ship the remaining containers to Japan. American Health and Nutrition sent this information to Farmers Grain Dealers Inc. by facsimile. According to American Health and Nutrition, it received no reply from the plaintiff. There were several other facsimiles from Okura regarding the quality concerns of the first shipment.

In its counterclaim, American Health and Nutrition stated, "The confirmation of sale does not disclose the grade of the soybeans, but it was the understanding of buyer and seller that the grade would be high quality and equivalent to the sample provided, i.e., no less than grade 1." American Health and Nutrition also stated, "Under Rule 19, grain sold for delivery, origin inspection, shall be covered by an inspection certificate of the grade contracted. All the grade contracted herein was based upon an inspection of an original sample and representations of FGDI (Farmers Grain Dealers Inc.)."

American Health and Nutrition claimed that it did not receive from Farmers Grain Dealers Inc. the commodity it originally contracted for, "high quality, grade 1, chemical free Vinton 81 soybeans." American Health and Nutrition further claimed that all three contracts were directly related and subject to Section 2 of the NGFA Arbitration Rules. American Health and Nutrition claimed that NGFA Grain Trade Rules 19, 20, 22 and 29 should apply to this case. It also claimed that it was entitled to a setoff of $63,132.57 against all 20 containers of soybeans, because of a loss of profit and expenses incurred on its transactions with Okura.

The Decision on the Counterclaim

After careful consideration, the arbitration committee concluded that there was no written confirmation to support American Health and Nutrition's claim that it contracted to purchase "high quality, grade 1, chemical free Vinton 81 soybeans." The only written contracts of record were the sales confirmations that Farmers Grain Dealers Inc. issued, which did not stipulate "high quality, grade 1" soybeans.

As for American Health and Nutrition's assertion that the trade was made based upon an inspection of an original sample, representations of Farmers Grain Dealers Inc., and that NGFA Grain Trade Rule 20 should apply, the arbitration committee concluded that Grain Trade Rule 20 would apply **only** if the written terms of the trade called for "sample" grain. They did not. If American Health and Nutrition believed Grain Trade Rule 20 was applicable, it was not apparent to the arbitration committee that it made any attempt to follow the protective provisions of the rule. The committee also noted that Farmers Grain Dealers' sales confirmation contained terms and conditions that stated: "5. Seller MAKES NO WARRANTY THAT GRAIN SOLD HEREUNDER IS FIT FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL THE SELLER BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES" and "7. THERE ARE NO ORAL AGREEMENTS OR WARRANTIES COLLATERAL TO OR AFFECTING THIS AGREEMENT."

As for American Health and Nutrition's claim that the trade should be subject to NGFA Grain Trade Rule 19, the arbitration committee found that since the sales confirmations called for "No Chemical Vinton 81 Soybeans" and nothing more, there was no reason for the seller to notify the buyer that the grade of the soybeans applied was anything other than in accordance with the terms of the contract.

Concerning American Health and Nutrition's claim that all three contracts were related and subject to Section 2 of the NGFA Arbitration Rules, the arbitration committee concluded that American Health and Nutrition was within its right to file a counterclaim in regard to Farmers Grain Dealers' confirmation numbers 5973 and 5980. However, the arbitrators did not concur with American Health and Nutrition's assertion that there was basis for an offset on any of the contracts resulting from American Health and Nutrition's loss of profit in its transactions with Farmers Grain Dealers Inc. NGFA Grain Trade Rules and Arbitration Rules do not provide for guaranteed profit to any company on any particular trade.

The arbitrators also found that American Health and Nutrition could not introduce any issue that was not related to the shipments covered by the sales that Farmers Grain Dealers Inc. referenced in its original statement of claim in this arbitration case. To support this finding, the arbitrators referenced NGFA Grain Trade Rule 43, which states: "Failure to perform in keeping with the terms and conditions of a contract shall be grounds for the refusal only of such shipment or shipments, and not for the recision of the entire contract or any other contract between Buyer and Seller."

American Health and Nutrition asserted that NGFA Grain Trade Rules 22 and 29 should apply to the case. But the arbitrators found that Grain Trade Rule 22 applies to grain sold basis "origin official inspection." The contracts in this case did not call for origin official inspection. Instead, the contracts provided for "origin grades to govern." Since the contracts did not call for "official" grades, Farmers Grain Dealers Inc. was not obligated to provide official certificates to American Health and Nutrition. Farmers Grain Dealers Inc. said that American Health and Nutrition had established its requirements for the origin grade certificates directly with DeLong prior to or at the time of loading, a statement that American Health and Nutrition did not dispute.

For these reasons, the arbitration committee denied American Health and Nutrition's counterclaim and request as being without merit. The arbitration committee reiterated that the absence of a written purchase confirmation from American Health and Nutrition meant there were no means available to confirm what its specific quality requirements were on the contracts in question in this case. To avoid this type of dispute in the future, the arbitration committee strongly recommends that both parties to a trade send the other party a written confirmation.

Submitted with the consent and approval of the arbitration committee, whose names are listed below:

William Bluml, *Chairman*
Assistant Marketing Manager
West Central Cooperative
Ralston, Iowa

John Campbell
Vice President, Government Affairs
and Industrial Products
Ag Processing Inc.
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Lorraine Idt
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