National Grain and Feed Association
Arbitration Decision
1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3917
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: http://www.ngfa.org

October 4, 2001

Arbitration Case Number 1817

Plaintiff: The Andersons Inc., Maumee, Ohio

Defendant: Chad Crotser, Mendon, Mich.

Statement of the Case

This case involved two cash contracts providing for the delivery of a total of 14,000 bushels of corn by Chad Crotser ("Crotser") to The Andersons Inc. ("Andersons").

On Nov. 21, 1994, Crotser entered into contract number 24201 for the delivery of 4,000 bushels of corn to Andersons' White Pigeon, Mich., facility, of which 1,162.35 bushels were delivered by June 1996. On Feb. 3, 1995 Crotser entered into contract number 24740, which pledged delivery of 10,000 bushels of corn to the same facility in July 1996. No deliveries were executed in fulfillment of the latter contract.

Based upon representations made by Crotser that he had no further corn to deliver in fulfillment of the two contracts, Andersons cancelled contract number 24740 on June 21, 1996 and the balance of contract number 24201 on June 26, 1996. The resulting market difference, including the cancellation charges, equaled $28,149.40, which included fees and contract cancellation charges totaling $641.88. This amount was reduced by $1,225, which was the balance due Crotser on a third contract that Crotser had with Andersons. Andersons asserted a claim against Crotser for the amount of $27,507.52.

Crotser countered by claiming he was not obligated to deliver the remaining balances because he had not signed the contracts and that the amounts exceeded his production capacity. Further, Crotser alleged that Andersons coerced Crotser's father to sign the contracts on his behalf. Finally, Crotser claimed that in the cancellation of the undelivered balances, Andersons did not mitigate its damages.

Majority Decision

The arbitrators determined that contract numbers 24740 and 24201 were part of a series of contracts that Crotser had entered into with Andersons. This series established a reasonable understanding for both parties of how Crotser contracted his grain. The two contracts involved in this case did not represent a difference in the pattern.

Andersons adhered to NGFA Grain Trade Rule 3(a), with regard to the sending of confirmations. Crotser's own testimony indicated he received confirmations and amendments to these contracts, but discarded them and failed to notify Andersons of any dispute as to their validity or the existence of any discrepancy. Under Grain Trade Rule 3(a), Crotser was required to notify Andersons immediately upon receipt of the confirmation of any dispute or discrepancy in the contract. Thus, by remaining silent, Crotser confirmed his full acceptance of the terms of the contracts as stated in the confirmations.

The arbitrators found no validity to Crotser's argument that he could not be held responsible for the under-delivery of the two contracts because they exceeded his production capacity. According to NGFA Grain Trade Rule 28 (Old Rule 10): "If the Seller fails to notify the Buyer of his inability to complete his contract...the liability of the Seller shall continue until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted."

Further, Grain Trade Rule 28 provides that the buyer has the right to "cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day." It was the arbitrators' decision that Andersons acted in accordance with this trade rule provision when canceling the contracts at issue in this case.

The arbitrators found no evidence that Crotser entered into the contracts as the result of duress or by coercion on the part of Andersons.

As a final matter, the defense that Andersons did not mitigate damages also was without merit. In fact, by adhering to Grain Trade Rule 28, Andersons followed the industry standard for such risk mitigation.

The Award

Therefore, it is ordered that:

- Crotser is to pay Andersons the amount of $26,282.52, plus the fees and contract cancellation charges in the amount of $641.88 plus daily interest at an annualized rate of 12 percent from June 26, 1996 until paid.

- Andersons also is entitled to collect from Crotser all of its documented costs of collection, including attorneys' fees.

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

Eric C. Wilkey, *Chairman*
Vice President
Arizona Grain Inc.
Casa Grande, Ariz.

Rick Unrein
General Manager
Grainland Cooperative
Haxtun, Colo.

Minority Decision

While I agree with the statement of facts and decision as presented here by the arbitration panel, my opinion on the award is dissenting.

I agree that Andersons is entitled to $26,282.52, plus fees and contract cancellation charges in the amount of $641.88 and daily interest at the rate of 12 percent from June 26, 1996 until paid. However, I disagree with the panel's award of attorneys' fees to Andersons. Funding for legal disputes is a necessary cost of doing business. It is my opinion that each side should pay its own attorney's fees, unless otherwise stipulated in the contract.

Submitted with the consent and approval of the arbitrator whose name is listed below:

W. Michael Fisher
Manager
Producers Rice Mill (Wynne Division)
Wynne, Ark.