



Arbitration Decision

National Grain and Feed Association

July 15, 1999

Arbitration Case Number 1824[®]

Plaintiff: Champaign Landmark Inc., Urbana, Ohio

Defendant: Thomas Prince, Sidney, Ohio

Statement of the Case

This case involved the sale of cash corn by the defendant, Thomas Prince (Prince), an Ohio cash grain producer, to the plaintiff, Champaign Landmark Inc. (Landmark), an Ohio agricultural cooperative association. The case was arbitrated pursuant to a court order¹ issued by the Court of Common Pleas of Champaign County, Ohio.

Landmark claimed that Prince failed to deliver the final 16,543.43 bushels of corn on hedge-to-arrive (HTA) contract number 9812 pursuant to the contract terms. Landmark sought damages of \$21,551.73, plus interest and attorney fees.

Prince countered by claiming that Landmark changed the terms of the contract and would not allow him to indefinitely "roll" the HTA agreement. Prince stated that Landmark did not act in "good faith" in business dealings with him. He contended that Landmark, by discontinuing the roll features previously allowed, forced him to lose control over his commodities and suffer losses that could have been averted. He also claimed that the contract was not a "bona fide forward contract," and raised questions as to whether the contract was legally enforceable. Finally, Prince argued that the matter was not properly before the National Grain and Feed Association Arbitration System.

HTA contract number 9812 initially was written on Dec. 20, 1993 for the purchase of 5,000 bushels of corn with contract terms that indicated a July 1994 Chicago Board of Trade (CBOT) futures reference price of \$3 per bushel. The original contract also specified a July 1994 delivery date. The original contract provided that it was to be priced or rolled by June 30, 1994.

The parties on June 30, 1994 "rolled" the original contract number 9812 and combined under this contract bushels from HTA contract numbers 9812, 9813, 9814, 9815, 9816, 9817, 9818, 9819, 9820 and 9821. Each of these contracts was written for 5,000 bushels with the July 1994 CBOT futures reference price of \$3 per bushel. After the roll and combination, the resulting contract (number 9812) then was amended

to show a total of 50,000 bushels of corn with a December 1994 CBOT futures reference price of \$2.94 per bushel. The delivery period also was amended to December 1994.

Prince delivered 30,000 bushels of corn in November 1994 and 3,453.57 bushels of corn in November 1995. These deliveries, settlements and payments were not disputed by either party. The remaining 16,546.43 bushels of corn due on the contract were subsequently rolled forward six different times.

The evidence showed that the parties' relationship deteriorated at some point and that during November 1996, Prince would not even communicate with Landmark. Landmark sent a letter to Prince dated Nov. 27, 1996 explaining his alternatives and requirements under the contract. The final roll was executed on Nov. 29, 1996, when the futures reference price was adjusted to \$1.7875 reference the March 1997 CBOT futures. The delivery period was stated as, "Must be delivered by 3/97."

Basis and alternative delivery service charges were set on Feb. 27, 1997, with a final cash price of \$1.8975 delivered Dayton established on the contract. This pricing was confirmed in a letter sent by Landmark to Prince dated Feb. 27, 1997. The letter also stated: "If bushels not delivered by Monday, March 31, 1997, we will cash out contract and proceed accordingly."

Prince failed to deliver the corn covered by the contract and Landmark canceled the contract on March 31, 1997 at the then-current market price of \$3.15 delivered Cargill, Dayton. Landmark also assessed a contract cancellation fee of 5 cents per bushel. This resulted in a charge of \$1.3025 per bushel due Landmark (Contract price \$1.8975 - Current market price \$3.15 = -\$1.2525 - Contract cancellation fee \$0.05 = -\$1.3025). Landmark's claim was based on 16,546.43 bushels at \$1.3025, or \$21,551.73, plus interest of \$6,036.42 and attorney fees.

The Decision

The arbitrators found that both parties to the contract entered into the agreement willingly and agreed to the original terms and conditions.

¹ Champaign Landmark Inc. was and is a NGFA Active member. Thomas Prince was not a member. The court's order was based on an arbitration clause contained in the parties' contract. The trial court's order was affirmed by an Ohio appellate court in *Champaign Landmark, Inc. v. Thomas Prince*, Case No. 97 CA 28 (Ohio 2d App. Dist. 1998).

As to whether arbitration – and more specifically NGFA arbitration – applied to this dispute, the arbitrators concluded that the terms of the contract were very clear. Each of Landmark’s contract confirmations provided on the front page that: “THE TERMS AND CONDITIONS CONTAINED ON THE REVERSE SIDE HEREOF ARE AN INTEGRAL PART OF THIS CONTRACT”. Importantly, paragraph 3 on the reverse side provided:

“Seller and Buyer agree that all disputes and controversies of any nature whatsoever between them with respect to this contract shall be arbitrated according to the Arbitration Rules of the National Grain and Feed Association, and that the decision and award determined thereunder shall be final and binding on Seller and Buyer.”

These contract terms and the court order² to arbitrate provided the arbitrators with jurisdiction and authority to decide the issues raised by both parties in this case.

Prince delivered corn in November 1995 and November 1996 to satisfy a portion of the original bushels contracted. Prince also signed the original contract confirmation and many of the amendments that followed. These facts demonstrated that Prince did not dispute the validity of the contracts and expected Landmark to make payment for the grain when delivered.

The original verbal contract may or may not have allowed for “multiple rolls.” The only applicable terms stated on the original written contract confirmation were, “Basis portion of contract must be priced or rolled by 6/30/94” and that “[b]asis must be set prior to delivery.” Each party had the responsibility to comply with NGFA Grain Trade Rule 6 and raise any discrepancies regarding the written contract confirmations at the time of the trade when the original confirmation or amendments were issued. Prince failed to provide any evidence indicating that he disagreed with the terms at these times.

The arbitrators also determined that Landmark was under no obligation to allow indefinite delivery periods. The original contract had a shipment date of July 1994. If **both** parties did not agree to amend or change the terms of a contract (including the shipment date) then there cannot be any change of the terms. NGFA Grain Trade Rule 41 provides that: “*The specifications of a contract cannot be altered or amended without the expressed consent of both the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by both in writing.*” In the case of the amendments regarding rolls, the evidence showed that neither party objected to the rolls that were made and confirmed.

The arbitrators carefully reviewed the contracts and the submissions of the parties. It was the arbitrators’ conclusion that this contract and its amendments constituted a legitimate and valid cash grain contract. The contract specified a shipment date of the physical commodity and a specified delivery point. Prince did not challenge the contract’s validity until a dispute arose.

Both Landmark and Prince agreed to subsequent rolls of the original contract, as evidenced by amendments dated June 30, 1994, Nov. 21, 1994, Nov. 30, 1994, Nov. 29, 1995, Feb. 29, 1996 and April 30, 1996. These amendments were signed

by both parties, and both parties performed their obligations under the contract on approximately 33,453.57 bushels that were delivered in November 1994 and November 1995. This contract involved a business deal between Landmark and Prince. Each party had the responsibility to provide the bargained-for performance.

The arbitrators found that Landmark acted properly when Prince failed to deliver the balance of the contracted grain. NGFA Grain Trade Rule 10 expressly sets forth the following procedure applicable to this type of situation:

“If the Seller fails to notify the Buyer of his inability to complete his contract, as above provided, the liability of the Seller shall continue until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. If so, the Buyer shall immediately (a) agree with the Seller upon an extension of the contract to cover the deficit; (b) after having given notice to the Seller to complete the contract, the Buyer, by the exercise of due diligence, will buy-in for the account of the Seller the defaulted portion of the contract; or (c) after having given notice to the Seller to complete the contract, the Buyer will cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.” [Emphasis added.]

It was documented by Landmark that numerous attempts to discuss the matter with Prince went unanswered. Therefore, the arbitrators found that Landmark acted properly by canceling the undelivered portion of the contract in accordance with NGFA Grain Trade Rule 10.

It appeared that all amendments to roll the contract forward were done with the same procedure and formula, and without any objection (at the time) from Prince. The arbitrators concluded that there was no basis for Prince to later disagree about the method used to roll the contract.

The Award

Therefore, it was ordered that:

- ▶ Champaign Landmark Inc. is awarded a judgment against Thomas Prince in the amount of \$21,551.73, plus compound interest at the rate of 7.5 percent per annum from April 30, 1997 until paid in full;
- ▶ All other claims asserted or assertable by the parties in connection with this contractual matter are denied; and
- ▶ Each party is responsible for its respective attorney fees and costs.

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

William Bluml, Chairman
Assistant Merchandising Manager
West Central Cooperative, Ralston, Iowa

Roger Fray
Grain Merchandising Manager
Ray-Carroll County Grain Growers, Inc.
Richmond, Mo.

Jeff Edwards
J & J Commodities LLC
Greenville, N.C.

² The three-judge appellate court panel examined this question in detail and said that “[t]he policy under both Ohio law and federal law is to encourage resolution of claims through arbitration.” The court found that all of the claims asserted by Prince against Landmark also were arbitrable.