



Arbitration Decision

National Grain and Feed Association

December 3, 1998

Arbitration Case Number 1843

Plaintiff: Champaign Landmark, Inc., Urbana, Ohio

Defendants: Micah Palmer and Palmerosa Farms, Inc., East Liberty, Ohio

Statement of the Case

This case involved a dispute¹ over failure to deliver all of the corn that Micah Palmer and Palmerosa Farms Inc. (referred to collectively as "Palmer"), the defendants, sold pursuant to several "futures fixed" hedge-to-arrive (HTA) contracts to Champaign Landmark Inc. (Champaign), the plaintiff.

Champaign contended that Palmer failed to deliver on the hedge-to-arrive contracts. The plaintiff also contended that it canceled its open contracts with Palmer after it was notified. Champaign sought to collect the market differences and contract cancellation charges in the total amount of \$121,938.91, plus finance charges of 2 percent per month commencing 30 days from the date of invoice until paid. Champaign also sought attorney fees and other incurred costs. Champaign sought damages against both Micah Palmer and Palmerosa Farms Inc., jointly and severally.

In contrast, Palmer, in his response and counterclaim, asserted Champaign had breached the contracts by not allowing the full use of the marketing tools Palmer believed he could use. In addition, Palmer alleged that Champaign knowingly offered contracts to Palmer that were risky. Moreover, Palmer maintained the risk was not disclosed and was misrepresented. Palmer argued that had he been allowed to use the tools he alleged were to be made available, Champaign would have owed Palmer \$100,000 and should be liable for that amount.

Palmer on Jan. 25, 1994 contracted to sell 60,000 bushels of July 1994 corn based upon a July futures fixed price of \$3.05 per bushel. The written contract on the first page in bold type provided that:

"BASIS PORTION OF CONTRACT MUST BE PRICED OR ROLLED BY 6/30/94;

BASIS MUST BE SET PRIOR TO DELIVERY."

The evidence showed that Champaign sent a confirmation of the contract to Palmerosa Farm, % Micah Palmer, which was signed by Micah Palmer for Palmerosa Farms Inc. The contract on June 15, 1994 was rolled to December 1994 futures, with the "time for shipment" specified as December 1994 delivery. Again, Palmer signed the contract confirmation. The contract was amended again on Nov. 2, 1994, with the corn to be delivered in March 1995. The pricing was rolled to March 1995 futures with the basis portion of the contract to be priced or rolled by Feb. 28, 1995. Palmer made a delivery on the contract in February, leaving a balance of 25,176.45 bushels to be delivered. Additional purchases were made by the plaintiff from Palmer, adding to the unfulfilled contract balance for a total of 45,823.24 bushels. Additional deliveries were to be made by Feb. 28, 1996, leaving a balance of 28,471.45 bushels.

The plaintiff purchased additional corn from Palmer, totaling 75,000 bushels on Nov. 10, 1995. This contract was rolled to May 1996 futures for Fall 1996 delivery. This contract was rolled again to July 1996 futures for Fall 1996 delivery. This contract was combined with the previously cited 28,471.45-bushel contract, and was rolled to July 1997 futures, with a delivery of 15,000 bushels in 1996, 50,000 bushels in 1997 and 38,471 bushels in 1998.

The evidence presented showed that Palmer had entered into HTA contracts with Champaign since May 1990. These contracts were confirmed by "Confirmation of Purchase Contracts" after Palmer would sell his commodity by telephone. Micah Palmer signed contract 191 dated Jan 25, 1994, amended

¹ Champaign was and is a NGFA Active member. Palmer is not a NGFA member. The parties' contracts provided that "all disputes 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."

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June 15, 1994, amended Nov. 2, 1994, changed Nov. 10, 1995. Micah also signed the original contract No. 5156 for 75,000 bushels.

Micah Palmer, in deposition testimony, conceded that he had contracts with Champaign and that the outstanding balance would be about 103,000 bushels. Palmer also acknowledged that the contracts had a delivery date. Micah Palmer contended Champaign did not allow Palmer to purchase calls and puts, but Palmer never specifically asked to use these alternatives. Micah Palmer also conceded that the contracts as written were accurate contracts. It also was revealed that in the Fall of 1996, Micah Palmer sold 20,000 bushels of cash corn to another grain company.

The evidence showed that Champaign tried to work out delivery schedules when production was diminished by weather problems and defer the production to delivery in later years. For instance, the contracts dated Sept. 9, 1996 were amended for delivery for later years at futures prices of \$1.5814 for 28,471.45 bushels and \$1.2815 on 75,000 bushels. Palmerosa Farms Inc. rented its farmland to another farmer, and Palmerosa farmed less than 30 acres.

Champaign's attorney sent (via facsimile) a letter dated June 25, 1997 to Palmer's attorney stating that contract numbers 1191 and 5156 for corn must be priced or rolled by June 27, 1997. No response was provided. Therefore, on June 27, 1997 the contracts were cashed out for the account of Palmer.

The Decision

The arbitrators, after thoroughly reviewing the contracts and the evidence submitted by the parties, reached the following conclusions:

- ▶ Palmer did enter into hedge-to-arrive (basis) contracts with specific delivery dates. The contracts were valid cash contracts.
- ▶ The original two contract confirmations were addressed to Palmerosa Farms, % Micah Palmer. Micah Palmer signed those contract confirmations as president of Palmerosa Farms Inc. Some of the amended contracts were not signed,

but no information was provided to suggest changes were asked for by Palmer.²

- ▶ After Palmerosa Farms leased most of the farmland and sold its crop to another grain company, Champaign Landmark made a correct decision to cancel the contracts on June 27, 1997.³ No evidence was provided by Palmer to counter Champaign's cancellation and damages' calculations. Nor did the defendants provide any evidence to rebut Champaign's allegations⁴ and demand that any resulting judgment should be granted against Micah Palmer and Palmerosa Farms Inc., jointly and severally.

The Award

The arbitrators unanimously found in favor of the plaintiff, Champaign Landmark Inc., and against the defendants, Micah Palmer and Palmerosa Farms Inc.

Therefore, it was ordered as follows:

Champaign Landmark Inc. was awarded a judgment in the amount of \$121,938.91 against Micah Palmer and Palmerosa Farms Inc., jointly and severally, for the actual market difference for cancellation of the contracts and the cancellation fees; and

Compound interest on the judgment shall accrue at the rate of 8.5 percent per annum from June 27, 1997 until the award is paid in full; and

Champaign Landmark Inc.'s claim for attorney fees and

costs was denied; and

The counterclaim asserted by Micah Palmer and Palmerosa Farms Inc. was denied.

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

Dave Gordon, Chairman

General Manager

Northwest Grain Growers Inc.

Walla Walla, Wash.

Don Ludwig

Manager/Partner

Elkhart Grain Co.

Elkhart, Ill.

Joe Guenley

Vice President

Agrex Inc.

Overland Park, Kan.

² Each of the contract confirmations specifically provided on the first page that "[f]ailure to advise us immediately upon your receipt of this Confirmation of Purchase and Contract of any errors or omissions contained herein will be understood by us as your acknowledgment and unconditional acceptance of the terms and conditions as stated." The contract confirmations also expressly referenced the NGFA Trade Rules. NGFA Grain Trade Rule 6(c) provides that "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."

³ NGFA Grain Trade Rule 10 provides for the following regarding incomplete shipment or delivery by a seller: "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."

⁴ An affidavit submitted by one of Champaign's employees asserted that: "Micah Palmer acted personally and on behalf of Palmerosa Farms Inc. We considered them one and the same." The evidence also showed that while Micah Palmer signed some of the contract confirmations apparently in his capacity as president of Palmerosa Farms Inc., other confirmations addressed merely to Palmerosa Farms, % Micah Palmer, received no response from Micah Palmer, in either his individual or corporate capacity.