National Grain and Feed Association

Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

November 10, 2005

Arbitration Case Number 2070

Plaintiff: **Pattison Bros. Mississippi River Terminal Inc., Fayette, Iowa**

Defendants: **Philip Meyer d/b/a Meyer Brookside Farms Inc., New Prague, Minn.**

Statement of the Case

This arbitration case involved contracts for Kandi food-grade soybeans between Pattison Bros. Mississippi River Terminal Inc. ("Pattison") and Philip Meyer d/b/a Meyer Brookside Farms Inc. ("Brookside").

In the presentation of its case against Brookside, Pattison submitted the following allegations:

- Pattison made a verbal agreement for an acreage contract with Brookside for Kandi food-grade soybeans by telephone on Feb. 7, 2002. Pattison then sent a written contract to Brookside (contract number 35520). The contract contained the following specifications:
  - 1,500 acres of production;
  - the final premium price would be 75 cents over the applicable Chicago Board of Trade (CBOT) futures reference price; and
  - the document entitled "Food Grade Kandi Program for 2002 Production in Minnesota," which detailed the Kandi soybean grade requirements and quality criteria, was part of the contract terms.
- Although Brookside did not sign the acreage contract or the "Food Grade Kandi Program for 2002 Production" grade requirements, Brookside did not object to any of the terms or issue any contract confirmations of its own. Therefore, based upon NGFA Grain Trade Rule 3(B), the acreage contract was legal and enforceable.
- Pattison and Brookside agreed to four subsequent pricing contracts for 10,000 bushels each. The four subsequent pricing contracts expressly provided that "Kandi Soybeans" was the applicable "Grain and Grade" and that "Destination" grades were applicable.
- Brookside signed and returned each of these four subsequent pricing contract confirmations.
- Each of these four subsequent pricing contracts contained the following language: *"IF GRAIN IS REJECTED AND THE BUSHELS ARE FORWARD PRICED, THE CASH PRICE WILL BE DETERMINED USING THE FORWARD CONTRACTED FUTURES PRICE PLUS OR MINUS THE COMMERCIAL BASIS FOR THE DELIVERY POINT AT TIME OF DELIVERY, LESS TRUCK FREIGHT IF APPLICABLE, AND SUBJECT TO APPROPRIATE MARKET DISCOUNTS."*
- After the 2002 harvest, Pattison probed the storage bins on Brookside's farm that contained the Kandi soybeans, and discovered that the soybeans allegedly had dirty seed coats and contained excessive moisture beyond the contractual grade requirements. Pattison indicated that it was unlikely that the soybeans would be accepted, but if Pattison's buyer would accept the soybeans, Pattison also would accept them.
- Pattison's contracts also expressly provided the following in item 12: *"Buyer may have and pursue any remedy allowed by law, and (i) Buyer shall be entitled to collect from Seller reasonable attorney's fees incurred by Buyer in connection with enforcement of this contract and/or the breach by Seller; (ii) Buyer shall be entitled to collect from Seller interest on any amount owing to Buyer by reason of Seller's breach, at the rate of 1½% per month, or fraction thereof, until paid."*
- Each contract confirmation also provided in item 2 that, *"Except as otherwise expressly provided for herein, this contract is subject to National Grain and Feed Association trade rules in effect on the date hereof."*
- Brookside contacted Pattison in early January 2003 inquiring about delivery schedules for the Kandi soybeans. Pattison informed Brookside that it did not

yet have shipping instructions from the buyer. Pattison asserted that the acreage contract, which served as the foundation for all of the bushels contracted, provided for buyer's call delivery.

- On Jan. 27, 2003, Pattison advised Brookside that based upon the earlier samples taken by Pattison; the buyer was not willing to accept the soybeans. Pattison and Brookside discussed possible buy-out options, and agreed to roll the CBOT reference month.
- On March 17, 2003, Pattison contacted Brookside informing that it would begin accepting delivery of the Kandi soybeans on March 26 at Clayton, Iowa. Pattison agreed to pay the additional truck freight for delivery to Clayton.
- Brookside delivered one load on March 26, which did meet quality specifications.
- Brookside delivered three loads on March 28, none of which met quality specifications.
- Subsequently, the parties mutually agreed that Brookside would cease further deliveries, and would run the fans on its farm bins to attempt to reduce the moisture content to an acceptable level.
- The parties verbally agreed to extend the delivery period on the contracts through May 2003.
- Relations between the parties began to worsen immediately thereafter. Pattison was unable to obtain subsequent deliveries from Brookside. Brookside refused to deliver unless Pattison changed the previously established contract pricing. When informed that Pattison would accept delivery on May 13 to St. Paul, Minn., Brookside informed Pattison that trucks were unavailable to deliver to St. Paul during that time frame.
- Pattison said it confirmed on May 10, 2003 that Brookside did not intend to deliver the Kandi soybeans.
- Pattison said it determined on May 12, 2003 that Brookside was in default on all four contracts (36521, 36698, 36820, 37007), and calculated its damages in the sum of $43,538.61, plus 18 percent interest and attorney fees.

In response to Pattison's claims and in the presentation of its own counterclaim against Pattison, Brookside submitted the following allegations:

- Pattison's claims that Brookside breached the contracts because it failed to deliver soybeans that met Pattison's quality standards and refused to deliver additional soybeans were without merit.
- Because of the problems Brookside experienced with Pattison in 2001, Brookside would not enter into an acreage contract with Pattison in 2002. Brookside refused to agree to an acreage contract, and accordingly, Brookside did not sign either the 2002 acreage contract presented by Pattison, nor the grade criteria agreement.
- Instead, Brookside did agree to the four contracts (36521, 36698, 36820, 37007) for 10,000 bushels each. Brookside maintained that these four contracts were stand-alone agreements because it did not agree to the acreage contract.
- Brookside began contacting Pattison in November 2002 on a regular basis to arrange delivery of the soybeans, but Pattison refused to accept any deliveries until the end of March 2003. At that time, Pattison agreed to accept a small portion of the contract volume, and then refused to take delivery of additional soybeans.
- After inspecting Brookside's soybeans on-site at the farm, Pattison contacted Brookside in December 2002 stating that the soybeans in bin 12 did not meet the company's quality standards, and that Pattison was releasing these 25,000 bushels from the contract.
- Pattison was required at this point to give written confirmation of the repudiation, and to either: 1) agree to an extension of the contract; 2) sell out the defaulted portion of the contract; or 3) cancel the contract at fair market value based upon the close of the market the next business day (pursuant to NGFA Grain Trade Rule 28B). Therefore, Pattison could not cancel the contract with Brookside in January, and then receive damages based upon CBOT futures pricing in May 2003 on those same contracts.
- Near the end of March, Pattison notified Brookside that it would accept soybean deliveries, but Pattison changed the delivery point from Mapleton, Minn., to Clayton, Iowa. Despite what it termed the significant inconvenience of this change, Brookside said it agreed because it was eager to deliver the soybeans.
- Brookside delivered one load of soybeans on March 26, which Pattison inspected and accepted under the contract.
- On March 27, Brookside delivered another load, and on March 28, Brookside delivered three additional truckloads to Pattison. A few weeks earlier, a Pattison employee inspected these beans in the bin, and Pattison determined the moisture content to be acceptable at the time. However, Pattison subsequently refused these beans, claiming that they did not meet its quality criteria because of excessive moisture. Pattison consequently paid Brookside the cash price, rather than the contract premium price, and advised that it no longer would accept deliveries from Brookside.

- Brookside disputed Pattison's claim that the parties agreed in March 2003 to extend the deadline for delivery. NGFA Grain Trade Rule 4 states that, "*Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by both parties in writing.*" Brookside maintained that no written confirmation was prepared because no such alteration was mutually agreed upon.

- In May 2003, Pattison began contacting Brookside, seeking a new arrangement for the remaining soybeans. However, Brookside alleged that because of the poor track record of dealings with Pattison, it responded that it would deliver the soybeans only if paid the contract price, including the full premium, prior to delivery, which Pattison refused to do.

- Brookside maintained that Pattison breached the contract by refusing to accept the soybeans within the contract period, and by failing to pay the contractually agreed-upon price for the soybeans that were delivered.

- Had Brookside been permitted to deliver the soybeans earlier – when it said it wanted to – the beans may have met Pattison's grade criteria. Brookside maintained that an extended period of storage may result in the degradation of quality of agricultural crops, including soybeans.

- Pattison refused to accept delivery early when the price would have been low, but later sought delivery after prices escalated, providing Pattison with the additional financial benefit from the delay of this transaction. Why else would Pattison call for delivery after the contract expiration date on the same grain rejected earlier, Brookside asked rhetorically.

- Brookside requested that Pattison's claims be denied in their entirety. Further, Brookside requested an award in its favor for attorney fees, arbitration fees, and for the 75-cents-per-bushel premium that Pattison had contracted to pay Brookside on the 40,000 bushels (amounting to $30,000).

The Decision

The arbitrators determined that the first question to address was whether the 2002 acreage contract (35520) was valid and enforceable:

- The arbitrators determined that there was inadequate proof regarding whether the Feb. 7 telephone agreement involving the acreage contract actually occurred.

- The arbitrators then referred to the NGFA Grain Trade Rules, wherein Rule 3(B) states as follows: *"If either the Buyer or the Seller fails to send a confirmation, the confirmation sent by the other party will be binding upon both parties, unless the confirming party has been immediately notified by the non-confirming party, as described in Rule 3(A), of any disagreement with the confirmation received."*

- The arbitrators observed that Brookside did not deny receipt of the acreage contract in its arguments. Instead, Brookside actually confirmed receipt of the contract by stating in paragraph #9 of the affidavit attached to Brookside's Statement of Answer and Counterclaim that, *"… I refused to enter into an acreage contract with Pattison Bros. in 2002. This is why the agreement presented by Pattison Bros. did not contain my signature. Similarly, I refused to sign the Food Grade Kandi Program grade agreement in 2002."*

- The arbitrators consequently concluded that NGFA Grain Trade Rule 3(B) applied to this case, and that because Brookside received the contract and did not notify Pattison of any disagreement, acreage contract (35520) was valid and binding upon both parties.

Next, the arbitrators addressed whether the four subsequent contracts (36521, 36698, 36820 and 37007) were stand-alone contracts or amendments to the original acreage contract (35520):

- The arbitrators recognized that this issue was not entirely clear because in 2001, the subsequent-pricing contract specifically stated that it related to the original acreage contract (33909) for that year. The four 2002 subsequent contracts contained no such specific references to the 2002 acreage contract.

- But the 2002 subsequent contracts did contain a statement (*"THE FOLLOWING PRICING IS SUBJECT TO THE TERMS OF THE ORIGINAL CONTRACT AND/OR AS AMENDED HERE IN."*), which the arbitrators concluded did establish that the subsequent contracts were amendments to the 2002 acreage contract.

- Therefore, any changes to the original terms resulting from these subsequent contracts were deemed to amend - not contradict - the original acreage contract.

The arbitrators also considered Pattison's argument that precedent for the manner in which the parties conducted business in 2002 was established the prior year, and that consequently Brookside had prior knowledge of how these transactions would be conducted:

- The arbitrators determined that Pattison's argument might have been persuasive if the acreage contract and subsequent pricing contract for 2001 contained the same terms as the acreage contract and subsequent pricing contracts for 2002. In 2001, the subsequent quantity contract specifically designated "BUYERS CALL DELIVERY" and that it was a pricing contract related to the acreage contract. In 2002, none of the four subsequent pricing contracts specifically referenced the original acreage contract, and only one of the four pricing contracts (36698) included a reference to "BUYERS CALL DELIVERY".

- The arbitrators rejected the argument that because all deliveries the year before were "buyer's call," that they were to assume that all of the 2002 subsequent contracts also were buyer's call deliveries. The arbitrators concluded that only the one contract (36698) containing that specific reference was in fact buyer's call delivery, and that the 2001 contracts did not establish precedent for the other three 2002 contracts (36521, 36820 and 37007).

The arbitrators then referred to paragraph 18 on each contract, which stated: *"If more than one contract is open for the identical shipping period, shipments or truck pickups are to be applied on contracts in order of their contract date commencing with oldest one first."* Based upon this specific provision agreed to by both parties on each contract, the arbitrators determined that the 3,200.9 bushels that were delivered would all be applied to the oldest contract (36521). The remaining open undelivered bushels applicable to each contract were as follows:

Contract Number	Open Undelivered Bushels
36521	6,799.1
36698	10,000
36820	10,000
37007	10,000

Because Brookside denied the existence of an extension of the delivery period between the parties, and the arbitrators found nothing in writing or by other persuasive evidence indicating to the contrary, the arbitrators referred to the terms of contracts themselves to establish the applicable expiration dates. On contract number 36698, because it was a buyer's-call delivery contract and no effort was made to deliver grain against this contract, the arbitrators applied the CBOT contract price as of April 30, 2003 (the last delivery date as stated on the contract) to establish the settlement price of $6.235 (SK). On contracts numbered 36521, 36820 and 37007, because these were not deemed to be buyer's call contracts, and yet Pattison would not permit Brookside to deliver against the contracts when it wanted to, the arbitrators determined that it would be inequitable to Brookside to settle these contracts at the April 30, 2003 closing price. Instead, the arbitrators concluded that the appropriate means to establish a settlement price on these contracts would be to apply the average CBOT soybean prices for the life of the contracts. The resulting price would be $5.7452 for contracts numbered 36820 and 36521 (which had a delivery period of Nov. 1, 2002 to April 30, 2003), and $5.716 for contract number 37007 (which had a delivery period of Nov. 15, 2002 to April 15, 2003).

Based upon the following calculations, the arbitrators determined a total settlement amount of $21,472.62:

CONTRACT	OPEN BUSHELS	ORIGINAL PRICE	SETTLEMENT PRICE	DIF.	SETTLEMENT AMOUNT
36521	6,799.1	$4.92	$5.7452	.8252	$5,610.62
36698	10,000	5.19	6.235	1.045	10,450.00
36820	10,000	5.32	5.7452	.4252	4,252.00
37007	10,000	5.60	5.7160	.116	1,160.00
TOTAL SETTLEMENT:					**$21,472.62**

The arbitrators further concluded that Pattison was entitled to interest from the date that this decision is considered final under NGFA Arbitration Rule 9(a) until the award is collected from Brookside. However, the arbitrators decided that interest should be awarded at a rate that better reflects current finance charges than was claimed by Pattison. The arbitrators determined to apply 6 percent as the appropriate interest rate in this case. Because of Pattison's use of poor contract language, failure to record alleged verbal agreements, and other factors, the arbitrators decided that Pattison was not entitled to collect attorney fees.

As for Brookside's counterclaim, because its Kandi food-grade soybeans did not meet grade standards, the arbitrators concluded that Brookside failed to perform its obligations under the contract and denied Brookside's claim for the $30,000 premium.

The Award

The arbitrators, therefore, ordered Brookside to pay $21,472.62, plus interest, which shall accrue at a rate of 6 percent per annum. Pattison's request for attorney fees and Brookside's counterclaim were denied.

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

Tom Bressner, *Chair*
General Manager
Assumption Cooperative Grain Co.
Assumption, Ill.

Jack Heim
General Manager
Walton Agri-Service Inc.
Upper Sandusky, Ohio

Lon Saucier
Director, Midwest Grain Operations
ConAgra Food Ingredients Co.
Omaha, Neb.

National Grain and Feed Association
Arbitration Decision
1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

November 10, 2005

Arbitration Appeals Case Number 2070

Appellant: **Philip Meyer d/b/a Meyer Brookside Farms Inc., New Prague, Minn.**

Appellee: **Pattison Bros. Mississippi River Terminal Inc., Fayette, Iowa**

The Decision

The Arbitration Appeals Committee individually and collectively reviewed all the evidence in Arbitration Case Number 2070, as well as the findings and conclusions of the original arbitration committee.

The Arbitration Appeals Committee determined that the contracts called primarily for the delivery of food-grade quality soybeans, but there was an optional provision that allowed commodity soybeans to be applied against the contracts without payment of the 75-cent-per-bushel premium. Thus, it was appropriate that the soybeans, which did not meet food-grade quality specifications, be applied to the contracts, and that the contracts remained in effect.

The Arbitration Appeals Committee determined that there appeared to have been some discussion about extending the delivery period on the four contracts, but written contract amendments never were initiated. Therefore, the Arbitration Appeals Committee further concluded that the contracts had not been amended, and that the original delivery periods remained unchanged. Accordingly, one contract ended on April 15 and the remaining three contracts ended on April 30. Since the defaulted portions of the four contracts were going to be canceled, pursuant to NGFA Grain Trade Rule 28 (A) (3), they should have been canceled "at fair market value based on the close of the market the next business day." The two appropriate dates to bring the respective contracts to market were April 16 and May 1.

The Award

The Arbitration Appeals Committee calculated the damages based upon the following table:

Contract Number	Open Bushels	Contract Price Less Premium	Price on April 16, 2003	Price on May 1, 2003	Difference	Damages
36521	6,799.1	$4.92		$6.2575	$1.34	$9,093.80
36698	10,000	$5.19		$6.2575	$1.07	$10,675.00
36820	10,000	$5.32		$6.2575	$0.94	$9,375.00
37007	10,000	$5.60	$6.0925		$0.49	$4,925.00
				Total		**$34,068.80**

The four contracts in question stated that, "*Buyer shall be entitled to collect from Seller reasonable attorney's fees incurred by Buyer in connection with the enforcement of this contract and/or breach by Seller,*" and provided for interest on amounts owed of 1.5 percent per month.

Accordingly, the Arbitration Appeals Committee awarded Pattison Bros. Mississippi River Terminal Inc. $34,068.80, plus attorney fees of $8,775.75, plus interest from May 31, 2003, at the rate of 1.5 percent per month until paid.

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

John L. McClenathan Jr., *Chair*
Vice President – Grain Group
Archer Daniels Midland Co.
Decatur, Ill.

Steve Campbell
Trading Manager
Louis Dreyfus Corp.
Kansas City, Mo.

Steve Colthurst
Procurement Manager
Land O'Lakes Purina Feed LLC
Bellevue, Wash.

Philip L. Hageman
Hageman and Associates LLC
Surprise, Ariz.

Roger Krueger
Director, Grain Marketing
South Dakota Wheat Growers Association
Aberdeen, S.D.