National Grain and Feed Association

Arbitration Decision

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October 21, 2010

Arbitration Case Number 2419

Plaintiff: **Michigan Agricultural Commodities Inc., Lansing, Mich.**

Defendant: **Greg Huhn and Geoff Huhn d/b/a Huhn Farms, Eagle, Mich.**

Statement of the Case

This case involved several grain contracts entered into between Michigan Agricultural Commodities Inc. ("MAC") and Greg Huhn and Geoff Huhn, d.b.a Huhn Farms ("Huhn Farms") for the delivery of corn, soybeans, "red wheat" and "white wheat." The dispute between the parties occurred when MAC cancelled these contracts after determining Huhn Farms would be unable to make delivery.

The first five contracts involved in this case were for the delivery of wheat to MAC in August 2008: contract number 139932 for 5,000 bushels of red wheat at $4.02 per bushel; contract number 139957 for 5,000 bushels of red wheat at $3.92 per bushel; contract number 139986 for 5,000 bushels of red wheat at $4.41 per bushel; contract number 143082 for 5,000 bushels of red wheat at $4.42 per bushel; and contract number 142836 for 5,000 bushels of white wheat at $4.17 per bushel.

In July 2008, MAC said it became concerned about Huhn Farms' ability to deliver the wheat associated with these contracts. In a conversation at that time, MAC said Huhn Farms indicated it would be unable to deliver. On Sept. 3, 2008, MAC mailed a letter to Huhn Farms indicating that Huhn Farms had until Sept. 10, 2008, to make the deliveries or the contracts would be cancelled at market value, chargeable to Huhn Farms. After no response from Huhn Farms was received, MAC cancelled the wheat contracts at $7.07 per bushel. MAC also assessed a 15-cent-per-bushel cancellation fee, and charged Huhn Farms' account.

As a result of the alleged default by Huhn Farms on its wheat contracts, MAC said it discussed with Huhn Farms the remaining corn and soybean contracts that had been entered into between the parties. Three of these contracts were for corn to be delivered to MAC in November 2008: contract number 156971 for 10,000 bushels at $4.39 per bushel; contract number 139956 for 5,000 bushels at $3.37 per bushel; and contract number 142837 for 5,000 bushels at $2.93 per bushel. On Dec. 3, 2008, Huhn Farms contacted MAC and instructed it to cancel these corn contracts. At that time, MAC bought in the contracts at $3.54 per bushel and assessed a 15 cent cancellation fee. The net equity from this cancellation was to be applied to Huhn Farms' accounts receivable.

The remaining contracts in dispute consisted of two soybean contracts for November/December 2008 delivery: contract number 140086 for 5,000 bushels at $6.68 per bushel and contract number 142838 for 5,000 bushels at $6.50 per bushel. On Nov. 5, 2008, MAC sent a letter to Huhn Farms requesting that it contact MAC by Nov. 14, 2008 to confirm its delivery intentions. On Nov. 7, 2008, Huhn Farms spoke with MAC, yet MAC said Huhn Farms was unclear about its ability to deliver in fulfillment of the two soybean contracts. On Jan. 14, 2009, after no delivery had been made by Huhn Farms on the two contracts, MAC sent a letter requesting that Hugh Farms contact MAC concerning delivery. After receiving no response, MAC said, it cancelled the contracts at $9.72 per bushel and assessed a 20-cent-per-bushel cancellation fee.

As a result of the cancellation of the aforementioned contracts, MAC requested damages of $109,100, plus interest and attorney fees.

Huhn Farms replied with a counterclaim asserting that it be allowed to deliver grain to fulfill the aforementioned contracts. Further, in response to MAC's claims for cancellation costs, Huhn Farms also contended that certain cancellation fees were outside of the contract terms.

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The Decision

The arbitrators determined there was no disagreement by either party as to the existence of the contracts and their terms. Thus, the outstanding issues concerned how the contracts were cancelled and the associated fees. To resolve these matters, the arbitrators concluded that NGFA Grain Trade Rule 28(A) applied to this dispute. Rule 28(A) states as follows:

> (A) Seller's Non-Performance
>
> If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Buyer by telephone and confirmed in writing. The Buyer shall then, at once elect either to:
>
> (1) agree with the Seller upon an extension of the contract; or
> (2) buy-in for the account of the Seller using due diligence, the defaulted portion of the contract; or
> (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.
>
> If the Seller fails to notify the Buyer of his inability to complete the contract, as provided above, the liability of the Seller shall continue until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. In such case it shall then be the duty of the Buyer, after giving notice to the Seller to complete the contract, at once to:
>
> (1) agree with the Seller upon an extension of the contract; or
> (2) buy-in for the account of the Seller, using due diligence, the defaulted portion of the contract; or
> (3) cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day.

Concerning each of the contracts at issue in this case, it was clear no delivery had been made to MAC by Huhn Farms. As a result, at the end of the delivery period, the arbitrators determined it was well within the NGFA Trade Rules for MAC to cancel the contracts and cover its losses. As a result, MAC incurred losses in the amount of $98,750, not including any cancellation fees.

Huhn Farms argued that MAC's assessments of cancellation fees totaling 15 to 20 cents per bushel were outside of what was stated within the original purchase contracts. Upon a review of the contracts, the arbitrators relied on the verbiage in the purchase contract which stated: "There will be a 5 cent/bu. charge on any quantity not delivered to an MAC facility."

The Award

The arbitrators ruled that Huhn Farms was liable for damages to MAC in the amount of $100,500 which included the damages from the cancelled contracts and a 5-cent-per-bushel fee as stated in the purchase contracts. The arbitrators also awarded interest to be calculated at a rate of 3.25 percent per annum, pursuant to NGFA Arbitration Rule 8(m) beginning on Feb. 1, 2009 until paid. Attorney fees are denied. Huhn Farms' counterclaim is denied.

SUBMITTED WITH THE UNANIMOUS CONSENT OF THE ARBITRATORS, WHOSE NAMES APPEAR BELOW:

Todd Gerdes, *Chair*
Specialty Grains Manager
Aurora Cooperative
Aurora, Neb.

Tom McCreight
Chief Executive Officer
Equity Marketing Alliance LLC
Enid, Okla.

Steve Strong
Senior Corn Trader
Bunge North America, Inc.
St. Louis, Mo.