



National Grain and Feed Association

Arbitration Decision

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March 26, 2012

Arbitration Case Number 2498

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

Defendant: Ron Klaus and Brian Klaus d/b/a Poverty Hills, Palms, Mich.

Statement of the Case

This case concerned two contracts entered into between the sellers, Ron Klaus and Brian Klaus d/b/a Poverty Hills (Poverty Hills), and the buyer, Michigan Agricultural Commodities Inc. (MAC).

The first contract (number 145844) called for an original shipment period of November 2007 for 5,000 bushels of U.S. No. 2 white wheat at \$4.90 futures price only [hedge-to-arrive]. This contract subsequently was rolled to September 2008 delivery. The second contract (number 145843) called for a shipment period of December 2008 for 10,000 bushels of U.S. No. 2 white wheat at \$4.71 futures price only (HTA). HTA purchase contracts for the delivery of the white wheat were written to Poverty Hills, with Ron and Brian Klaus named also as the sellers, and MAC as the buyer.

On Jan. 9, 2007, MAC sent a letter to Poverty Hills requesting confirmation of unsigned contracts, listing the contract numbers, quantities, commodity, price and delivery periods for both contract numbers 145844 and 145843. Brian Klaus subsequently returned the confirmation with his signature dated Jan. 29, 2007, acknowledging the validity of the contracts and Poverty Hills' agreement on the contract prices on that date. Through a signed amendment for contract number 145844 (dated April 28, 2008), the futures price later was changed from \$4.90 to \$5.06 per bushel, and the option month was changed to May 2008. The arbitrators noted that this was the only signed documentation from either party amending the terms of the Jan. 9, 2007 confirmation letter.

Neither party disputed that there were no deliveries of wheat made for either contract. MAC subsequently cancelled both contracts and invoiced Poverty Hills. According to MAC, it cancelled contract number 145844 on Sept. 11, 2008 at a

futures price of \$7.055 per bushel, and it cancelled contract number 145843 on Dec. 2, 2008 at a futures price of \$5.06 per bushel. The defendant, Brian Klaus, said he requested and received cancellation notices after MAC raised allegations concerning the quality and marketability of the wheat to be delivered under the contracts.

Contract Number 145844 Cancellation:

MAC calculated its damages for cancellation of this contract as follows: \$7.055 per bushel (cancellation futures price) – \$5.21 per bushel (contract price) + \$0.10 per bushel (cancellation charge) = \$1.945 per bushel on the contract quantity of 5,000 bushels.

However, the arbitrators noted the lack of any documentation submitted to support a \$5.21 per bushel contract price. The most current documented price for this contract was in the April 28, 2008 amendment, which referenced a contract price of \$5.06 per bushel. In addition, contract number 145844, which was signed by both parties, included a provision that stated, "There will be a 5 cent/bu. charge on any quantity not delivered to a MAC facility."

Contract Number 145843 Cancellation:

MAC calculated its damages for cancellation of this contract as follows: \$5.06 per bushel (cancellation futures price) – \$4.90 per bushel (contract price) + \$0.10 per bushel (cancellation charge) = \$0.26 per bushel on the contract quantity of 10,000 bushels.

Neither party submitted a signed original contract for number 145843. The arbitrators noted that the only signed document

referencing contract number 145843 was the Jan. 9, 2007 letter, which was signed by both parties, indicating a contract for 10,000 bushels at \$4.90 per bushel. MAC did not submit any copy of an original contract number 145843. Klaus submitted

a copy of contract number 145843, which was not signed by either party and did not include prices, but it did provide the provision, "There will be a 5 cent/BU charge on any quantity not delivered to a MAC facility."

The Decision

The arbitrators concluded there was no dispute that there were no deliveries against the contracts. Poverty Hills indicated in the submitted documents that Kraus requested a cancellation, though the timing of that request was not documented by either party. In his statement, Klaus did not dispute the timing or the prices applied for the cancellation by MAC.

MAC requested contract price differences plus a \$0.10 per bushel cancellation charge. MAC also requested reimbursement of \$2,250 in legal fees, \$523.50 in NGFA arbitration fees, and interest at the rate of 12 percent per annum from the date of default.

The arbitrators determined that based upon the arguments and documentation provided by the parties, MAC appropriately determined the cancellation price for the contracts. With respect to the cancellation charges sought by MAC, however, the arbitrators concluded that none of the provided documents referenced or supported a \$0.10 per bushel cancellation charge. The arbitrators determined that both contracts indicated a \$0.05 per bushel charge for quantities "not delivered to a MAC facility." The arbitrators further decided that MAC's requests for interest and legal fees were not sufficiently supported.

The Award

For contract number 145844, MAC was awarded \$1.845 per bushel, plus the non-delivery charge of \$0.05 per bushel for a total of \$1.895 per bushel on 5,000 bushels, which amounted to \$9,475 due to MAC. On contract number 145843, MAC was awarded \$0.16 per bushel plus the non-delivery charge of \$0.05 for a total of \$0.21 per bushel on 10,000 bushels, which amounted to \$2,100 due to MAC. MAC also was awarded the arbitration services fee of \$523.50. The arbitrators declined to award attorney's fees or interest to MAC.

Therefore, the total award to MAC due from Poverty Hills was \$12,098.50.

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

Kevin Thompson, *Chair*
Senior Manager
The Scoular Company
Preston, Idaho

John Aeschliman
Branch Manager
Grainland Cooperative
El Paso, Ill.

William Ahlbrecht
Assistant General Manager
Ag Partners Co-op
Goodhue, Minn.