



June 1, 2020

CASE NUMBER 2849

**PLAINTIFF: CLARKSON GRAIN COMPANY, INC.
CERRO GORDO, IL**

**DEFENDANT: HOUMES FARMS
VEEDERSBURG, IN**

STATEMENT OF THE CASE

Clarkson Grain Company, Inc. (Clarkson) agreed on October 13, 2017, to purchase the production from 500 acres of organic corn from Houmes Farms (Houmes). The contract provided for an estimated quantity of 65,000 bushels based upon Houmes' yields from prior years. The contract also provided for "buyers call" and "FOB FARM" with shipment to begin on November 17, 2017 and end on April 30, 2018. At the end of the shipment period there were approximately 10,251.17 bushels left unshipped. Clarkson claims it was required to buy in for Houmes' account on those bushels, and, thus, Clarkson is seeking damages of \$15,376.76 (\$1.50 per bushel on the 10,251.17 bushels) for replacement cost of the bushels that were never executed. (Clarkson did agree to accept 8,800 bushels less than originally estimated due to poor yields and test weight).

Houmes claims the shortage on the contract resulted from Clarkson's failure to take possession of the corn at Houmes' farm pursuant to the contract terms. Houmes claims Clarkson was slow to pick up the grain during the contracted delivery period, sending only two trucks in December; three trucks in January; three trucks in February; one truck in March; and two trucks in April. Houmes states that Clarkson sent 16 trucks in May and that Houmes allowed Clarkson to continue picking up corn rather than impose the established deadline under the contract of April 30, 2018. The last day Clarkson picked up corn was May 23, 2018. Houmes states after not hearing from Clarkson in three weeks, it began selling the remaining corn to third parties on June 14, 2018. Houmes claims it sold 10,285.60 bushels between June 14 and August 2, 2018, which could have gone to Clarkson had Clarkson picked it up. Houmes argues, therefore, Clarkson defaulted on the contract.

Clarkson claims Houmes stopped all communication with Clarkson in May and did not respond to text messages Clarkson sent about sending trucks to pick up corn in June. Clarkson argues that Houmes never sent proper communication indicating that Houmes considered Clarkson in default. NGFA Grain Trade Rule 28(B) states the seller must notify the buyer that the buyer is in default on the contract and allow for the buyer to select from options provided under Rule 28(B) (1)-(3). Clarkson claims it never had the opportunity provided under Rule 28(B)(1) or (B)(3). Houmes argues that Clarkson should "know" it was outside the terms of the contract and that Clarkson's submitted record of text messages between the parties is incomplete and inaccurate.

THE DECISION

Grain Trade Rule 28 includes provisions that apply for both the buyer and the seller in case of default by the counter party on a contract. In this case, neither party provided any documentation or indication of a notification of default to the arbitration committee. Instead, Houmes took matters into its own hands and sold the balance of corn in its bins to other parties. Thus, Houmes did not perform under Rule 28(B) and failed to fulfill the contractual obligations to Clarkson. The arbitration committee unanimously finds in favor of Clarkson in this respect.

However, the committee declines to award any monetary damages to Clarkson because it failed to provide any documentation or proof of damages it incurred resulting from Houmes' actions. Clarkson's request for damages of \$15,376.76 is requested without any supporting evidence.

THE AWARD

No damages are awarded in this case.

Decided: April 10, 2020

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

Troy Presley, *Chair*
Grain Division Manager
CoMark Equity Alliance
Cheney, KS

Eric Dubbelde
Grain Market Advisor
Central Farm Service
Truman, MN

Brian Liedl
Senior Merchant
United Grain Corp.
Vancouver, WA