



National Grain and Feed Association Arbitration Decision

www.ngfa.org | www.ngfa.org/decisions

1250 I (Eye) Street, N.W., Suite 1003
Washington, DC 20005-3922

P: (202) 289-0873
F: (202) 289-5388

April 18, 2014

CASE NUMBER 2645

Plaintiff: South Dakota Wheat Growers Association, Aberdeen, S.D.

Defendant: Guy Anker, Murdo, S.D.

STATEMENT OF THE CASE

This dispute involved Cash Plus Contract Confirmation number 204-CP00002, dated April 29, 2010, between the seller, Guy Anker (Anker), and the buyer, South Dakota Wheat Growers Association (SDWG), for the sale and delivery of 5,000 bushels of U.S. No. 2 yellow corn to SDWG's facility in Kennebec, SD, between Oct. 1 and Nov. 15, 2010. The contract included an "Addendum to Cash Plus Contract," which provided a conditional obligation for shipment of another 5,000 bushels of corn in October-November 2011. Both Anker and SDWG signed the contract and addendum.

The agreement between the parties provided that, if on Oct. 19, 2011, the Chicago Board of Trade (CBOT) futures price for December 2011 corn was higher or equal to \$4.25 per bushel, then Anker would be obligated to an additional 5,000 bushels of U.S. No. 2 yellow corn for October-November 2011 delivery to SDWG's facility in Highmore, SD. The agreement also provided that SDWG pay Anker a premium of 33-cents per bushel on the first shipment of 5,000 bushels to be delivered in 2010 as an incentive for Anker to contract for the conditional second shipment of bushels in 2011.

On Oct. 28, 2010, Anker met with a SDWG representative at Anker's farm. During this meeting, the parties discussed cancelling the contract. According to SDWG, because Anker's crop was damaged by grasshoppers the parties agreed to cancel the obligation for the 2010 delivery stated in contract number 204-CP00002. SDWG then cancelled the contract and invoiced Anker for damages. SDWG stated that the parties then agreed to settle that dispute. SDWG submitted a letter it sent to Anker's attorney on Dec. 6, 2010, which stated:

Wheat Growers is willing to settle this account upon payment of \$15,000 by cashier's check on or before January 7, 2011. ... Furthermore, this settlement covers only the account due at this time. Any contracts (grain or otherwise) coming due, in 2011 or afterward, are not included in this settlement.

On Dec. 27, 2010, Anker's attorney sent a letter to SDWG confirming the payment for settlement "*in accordance with the agreement reached earlier this month.*" SDWG argued that this cancellation settled between the parties in December 2010 only related to the 2010 shipments due under contract number 204-CP00002 – and not to the second delivery obligation that could become due in 2011 under the terms of the addendum.

According to SDWG, the delivery obligation under the addendum was triggered when on Oct 19, 2011, the CBOT futures price for December 2011 corn was \$6.38 per bushel, which exceeded the "*Target Futures Price of Firm Offer*" in the addendum of \$4.25 per bushel. SDWG argued that Anker was, therefore, obligated to deliver an additional 5,000 bushels of corn during October-November 2011 pursuant to the terms of the addendum. On Oct. 20, 2011, SDWG sent contract confirmation number 204-HT00063 to Anker to memorialize that the second delivery obligation had been triggered under the agreement between the parties. SDWG claimed that Anker then failed to deliver the second load of 5,000 bushels due under the addendum. On Nov. 23, 2011, SDWG cancelled the contract. SDWG claimed \$8,850 in damages.

Anker argued that he instructed SDWG in October 2010 that he wanted all contracts with SDWG cancelled at that time. Anker claimed that when SDWG cancelled contract number 204-CP00002, SDWG had also cancelled the conditional delivery obligation under the addendum. According to Anker, the addendum was never meant to stand alone as a separate contract. Anker also argued that although he signed the Cash Plus contract and addendum, he did not fully understand the terms of the agreement. Anker claimed that SDWG “tricked” him and breached a “fiduciary duty” by failing to explain the contract to him and fully advise him of the risks involved. Anker also argued that SDWG breached the settlement agreement because he was led to believe that all contracts between the parties had been cancelled by that settlement. Anker further raised issues concerning the contracts between the parties based upon the claim that by contracting in this manner SDWG was dealing in securities.

In response to Anker’s arguments, SDWG claimed that in its verbal discussions with Anker and the terms of the settlement agreement between the parties SDWG had been very clear in distinguishing between the obligations for shipments in 2010 and 2011. SDWG argued that Anker was fully aware of his contractual obligations under the agreements between the parties and that by signing the contract and addendum, Anker certified that he understood the contract terms. SDWG further argued that the settlement reached in December 2010 did not incorporate the second shipment potentially due under the addendum because it could not be determined until October 2011 whether that conditional obligation would become due.

Anker also submitted a claim against SDWG, which related back to dealings between the parties in the fall of 2009. Anker claimed that SDWG had represented it would accept Anker’s entire 2009 corn crop. According to Anker, he had been trucking corn from the field to SDWG’s elevator in Kennebec until he was informed on Dec. 22, 2009, that SDWG would accept no more of his corn. Anker stated that this forced him to halt harvesting of his crop because he did not have suitable storage facilities. According to Anker, a snowstorm destroyed his remaining corn crop on Dec. 24, 2009. Anker claimed \$10,000 in damages for the loss of approximately 4,000 bushels of corn from his 2009 crop. In reply, SDWG argued that Anker failed to adequately support this claim with evidence or documentation. SDWG further stated that despite that the dispute between the parties was related to the events in 2010 and 2011 and have been in court and arbitration for nearly three years, this was the very first mention of any claim related to the 2009 crop.

THE DECISION

The arbitrators concluded that contract number 204-CP00002, including the attached addendum, represented a valid agreement between the parties. Anker signed both documents. There was no dispute that Anker failed to deliver corn during the October-November 2010 delivery period under the contract. The arbitrators determined that the \$15,000 paid by Anker to SDWG was in full settlement for the cancellation of this delivery under the contract.

The evidence presented in this case failed to demonstrate that Anker did not understand how the Cash Plus contract and addendum worked when he signed them on May 1, 2010, including that the agreement required both a 2010 delivery and, depending on future prices, a 2011 delivery. Nor did the evidence support Anker’s claims that 1) SDWG owed to Anker a fiduciary duty related to the potential risks of this contract or 2) the contract was a “security” subject to the protections and provisions for the selling of securities under the law.

After carefully reviewing the evidence and documentation submitted by the parties, the arbitrators further concluded that the \$15,000 settlement between the parties in December 2010 did not include any damages for the second missed delivery period in 2011. The terms used in the communications between the parties regarding the settlement were very precise in distinguishing between the obligations to delivery grain in 2010 and any later obligations to deliver in 2011. The arbitrators noted that SDWG’s Dec. 6, 2010 letter specifically stated, “*this settlement covers the account due at this time. Any contracts (grain or otherwise) coming due, in 2011 or afterward, are not included in this settlement.*” Anker did not dispute this condition of the settlement at the time. To the contrary, Anker’s attorney replied by letter on Dec. 27, 2010, confirming that payment for the settlement was tendered “*in accordance with the agreement reached earlier this month.*” Further, the arbitrators decided that because the conditional obligation to deliver in 2011 could not even be determined until October 2011, the settlement reached in 2010 would not have included the 2011 delivery. Based upon review of the contracts, affidavits and attorney letters submitted, the arbitrators concluded that, despite Anker’s contention that he cancelled all of his contracts, the parties continued to have a valid contract with respect to a possible 2011 delivery.

The arbitrators also decided that contract confirmation number 204-HT00063 was valid in accordance with NGFA Grain Trade Rule 3(B). SDWG and Anker had an agreement as of April 29, 2010, for the potential 2011 delivery. On Oct. 20, 2011, SDWG issued 204-HT00063 to confirm that the second delivery obligation was triggered when Oct. 19, the CBOT futures price for December 2011 corn reached \$6.38 per bushel (which exceeded the target price of \$4.25 per bushel in the addendum). Anker did not timely notify SDWG of any objections to the terms of the confirmation under NGFA Grain Trade Rule 3(B).

With regard to Anker's claims that referred to his 2009 corn crop, the arbitrators determined that these claims were not properly a part of this arbitration in accordance with NGFA Arbitration Rules Section 2, which states as follows:

The term dispute as used, herein, shall be deemed to cover the original complaint as filed, and also any cross complaint, counterclaim, or offset as set forth by the defendant, but in no case shall the matters submitted by the defendant be any other than those directly related to the transaction on which the original complaint is made.

The arbitrators further determined that even if these claims were permitted under NGFA Arbitration Rule 2, Anker failed to provide adequate support for his claims, including that SDWG had agreed to buy Anker's entire crop that year or that Anker incurred the damages asserted. The arbitrators also noted that despite the years long history of this dispute between the parties in the courts and arbitration, that this was apparently the first time that Anker had presented these claims

The arbitrators concluded that Anker's claims related to the 2009 corn crop were entirely unrelated to the claims in the original complaint under the Cash Plus contract and addendum.

THE AWARD

The arbitrators ruled in favor of SDWG in the amount of \$8,850.00. The arbitrators also awarded interest to SDWG in the amount of \$84.32 (representing interest on the award at the rate of 3.25 percent per annum pursuant to NGFA Arbitration Rule 8(m) for the period between the filing of the first and last arguments in this case).

Dated: March 4, 2014

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

Lance Kotschwar, *Chair*
Senior Compliance Attorney
Gavilon Grain LLC
Omaha, Neb.

Doug Cropp
Executive Vice President, Grain
Division
Landmark Services Cooperative
Cottage Grove, Wis.

Ryan McCoy
Grain Merchandiser
CoMark Grain Marketing LLC
Cheney, Kans.