



January 9, 2015

CASE NUMBER 2666

Plaintiff: Farmers Grain Company of Julesburg, Julesburg, CO

Defendant: Gary Stortenbecker, Chappel, NE

STATEMENT OF THE CASE

The plaintiff in this case, Farmers Grain Company of Julesburg (FGC), claimed that between February and July 2012, it entered into five contracts with the defendant, Gary Stortenbecker, for a total of 90,000 bushels of corn to be delivered between October and November 2012. According to FGC, the parties verbally agreed upon each contract either over the phone or in person. Stortenbecker only signed confirmations for the first two contracts (contract nos. 1597 and 1612), which were dated February 8 and March 6, 2012 respectively, for a total of 25,000 bushels of corn. FGC stated it made some attempts to contact Stortenbecker over subsequent months to obtain signed confirmations on the other three contracts (contract nos. 1649, 1650, 1652), which were dated June 25, June 26 and July 2 respectively, for a total of 65,000 bushels of corn. FGC was unsuccessful in securing signatures from Stortenbecker on the three later contracts.

Stortenbecker disputed that the five contracts were agreed upon between the parties. He acknowledged the validity of only the first two contracts that he had signed (contract nos. 1597 and 1612). Stortenbecker stated that he was unaware that FGC had claims related to the three other contracts until he received a letter from FGC by certified mail (with the return-receipt dated September 25, 2012).

Stortenbecker delivered 1,063.21 bushels of corn to FGC on September 5-6, 2012 (before he received the certified letter from FGC). According to Stortenbecker, he sought to deliver corn during this time on the *spot* market, but he was informed that September deliveries instead would be applied to fill the open October/November contracts. Stortenbecker stated the three unsigned contracts were not mentioned during these conversations. Stortenbecker claimed that because of FGC's intent to apply any September-delivered corn to the October/November contracts, he elected instead to sell the spot corn to another elevator. Stortenbecker eventually paid FGC \$48,003.51 for cancellation of the two signed contracts that were not in dispute.

On December 3, 2012 (after the shipment period under the contracts had expired), FGC cancelled the five contracts and claimed \$136,002.30 in damages based on alleged market losses. FGC's calculated damages took into consideration the delivery of the 1,063.21 bushels as well as the \$48,003.51 paid by Stortenbecker.

Stortenbecker disputed that he owed damages for contracts other than the first two signed contracts. Stortenbecker stated that he was willing to pay an additional 30-cent per bushel cancellation fee for undelivered bushels under the signed contracts as provided by the terms in those contracts.

THE DECISION

At the core of this dispute were the three contracts that Stortenbecker denied were agreed upon. In reaching their conclusions, the arbitrators focused on various issues including the following:

- 1) Did FGC, as the buyer, make sufficient effort at the outset of the contracts in dispute to confirm those contracts in writing? NGFA Grain Trade Rule 3(A) states that contract confirmations must go out “not later than the close of the business following the date of trade.” The contracts in dispute were dated June 25-26 and July 2, 2012. FGC sent them to Stortenbecker on July 17, 2014. The arbitrators consequently determined that FGC did not send out the confirmations for the contracts in dispute in a timely manner. The arbitrators noted that there were some plausibly extenuating circumstances in this case given that FGC believed Stortenbecker would be stopping by FGC’s offices to sign the contracts. The arbitrators concluded, however, that this did not allow for FGC to hold on to the contract confirmations for an additional 2-3 weeks before sending them out.
- 2) Did FGC follow common trade practice in following up on the confirmations from Stortenbecker after sending them out? Although industry practice and the NGFA Trade Rules do not require that a signed confirmation be returned for the contract to be valid, the arbitrators noted that FGC in this case was not prudent in how it followed up on the confirmations that were already untimely when they were sent out. Instead, FGC waited another 55 days before following up in writing on the confirmations before sending the certified letter to Stortenbecker. It is prudent to anticipate that when a seller does not return a signed confirmation a subsequent dispute related to the existence or validity of the contract or potential damages is likely to occur. Given the circumstances of this case and the volatile markets of the time, it would have been prudent for FGC to take prompt and immediate efforts to either confirm the contracts or cancel the disputed transactions in a deliberate manner thereby mitigating potential damages.
- 3) NGFA Grain Trade Rule 30(C) states that with respect to written communications, confirmations or notifications, “[t]he sender shall be responsible for the correct transmission of the message.” In its September 11, 2012 letter to Stortenbecker, FGC stated that Stortenbecker had moved and earlier correspondence had not reached him. The arbitrators noted that FGC was acknowledging that it had failed to communicate with Stortenbecker in this statement nearly 2 ½ months after the dates of the original contracts in dispute.
- 4) NGFA Grain Trade Rule 4 states that contracts cannot be altered without express consent of both parties. The arbitrators noted that when FGC applied the corn delivered in September – which Stortenbecker intended to sell on the spot market – to the October/November contracts then this constituted a contract change that was not agreed upon by both parties.

The arbitrators determined that FGC presented a plausible case with some records and details to support the transactions it claimed occurred between the parties. However, the arbitrators determined that this case turned upon an application of trade rules, trade custom and practice that led the arbitrators to conclude that FGC failed to prove that the contracts in dispute were valid. The arbitrators determined that FGC did not act in a timely manner and took insufficient measures with respect to the disputed transactions.

THE AWARD

Therefore, the arbitrators ordered that Stortenbecker pay FGC only the 30-cents per bushel on the two contracts cancelled and signed given that FGC already received \$48,003.51 for market losses from Stortenbecker for those contracts. FGC is consequently awarded an additional \$7,500 in damages.

Dated: December 1, 2014

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

Ben Baer, *Chair*
President
Livestock Nutrition Center
Memphis, TN

Joe Hennen
Assistant Grain Dept. Manager
Co-op Country Farmers Elevator
Renville, MN

Chad Larson
Grain Manager
Farmers Cooperative of Hanska
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