



National Grain and Feed Association Arbitration Decision

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June 14, 2016

CASE NUMBER 2734

**PLAINTIFF: HURON COMMODITIES, INC.
MONTICELLO, IL**

**DEFENDANT: IOM GRAIN, LLC
PORTLAND, IN**

STATEMENT OF THE CASE

Huron Commodities, Inc. (Huron) contracted in early 2013 to buy 298.04 short containers (approximately 223,400 bushels) of non-GMO soybeans from IOM Grain LLC (IOM). The delivery period agreed upon was between November 1, 2013 and September 12, 2014.

The dispute that arose concerns Huron's claim that IOM failed to perform and fill orders under the contracts in a timely and consistent manner; and IOM's claim that Huron failed to pay IOM in a timely fashion as required by the contracts.

It appeared to the arbitrators that out of the 298.04 short containers (6,078.91 metric tons/223,400 bushels) all but 387.8 metric tons/14,252 bushels were shipped. According to Huron, it bought-in the remaining balance due to IOM's insistence that Huron prepay for the soybeans. Huron also presented claims for dray charges, costs for fumigation services, trucking and processing fees, costs to buy-in the contracts, loss of future business and customers, and bag inventory that IOM had failed to return. Huron's claimed damages totaled \$241,045.84.

IOM claimed that due to Huron's failure to pay under the contracts that IOM was forced to sell the contracted grain at a loss of \$43,399.01. IOM also claimed \$2,201.47 for grain already shipped on Huron's behalf at the time the contracts were cancelled. IOM's claimed damages totaled \$45,600.48.

THE DECISION

As evidence in this case, Huron submitted three purchase contracts, which were signed by both Huron and IOM: purchase contract no. 1210, dated January 2, 2013, for 150 short containers (approximately 112,435 bushels); purchase contract no. 1212, dated January 2, 2013, for 98.04 short containers (approximately 73,487 bushels); and purchase contract no. 1227, dated March 25, 2013, for 50 short containers (approximately 37,477.954 bushels). The delivery period agreed upon under all three contracts was from November 1, 2013 until September 12, 2014. The contracts provided for Portland, IN as the "Del. Basis/FOB Point." The contracts required that the grain be free of insect infestation and

that the grain was subject to rejection because of insect infestation. The contracts also provided: “Payment Terms: TT on Receipt of Approved Faxed Documents.”

IOM submitted four sales contracts as evidence in this case for various quantities of containers of non-GMO soybeans. These contracts were not signed by both parties. To the extent that these contracts contained different or additional terms than the Huron purchase contracts, the arbitrators determined that the Huron purchase contracts were controlling because only the Huron contracts were signed by both parties.

The arbitrators arrived at the following resolution of this dispute, unanimously, after closely reviewing all the information submitted by the parties.

Huron and IOM agreed to terms that called for consistent shipping of containers throughout the shipping period. The contract terms regarding payment agreed upon by both parties provided for the wiring of funds upon the approval of faxed documents. Huron complied with these terms in a reasonable and customary manner and to the best of its ability. The Huron purchase contracts stated: “**Payment Terms: TT on Receipt of Approved Faxed Documents.**” The IOM sales contracts stated: “*Cash on Acceptance of Documents, Electronic Documents will apply. No verified adjustments within 24 hours of document receipt will constitute final acceptance. Payment due within 10 days of shipment.*” The arbitrators concluded that IOM’s claims that Huron was not paying in a timely manner under the contracts were unfounded even if one were to consider the terms of the IOM sales contracts as controlling.

Rather, Huron fulfilled the payment terms to the best of its ability and within practical industry standards. It appeared to the arbitrators that IOM’s claim that Huron’s payments were untimely was more likely used by IOM as an avenue to cancel its contractual obligations with Huron. By IOM’s own admission, Huron had always “paid late” on previous contracts going back various years. The arbitrators noted that this established an acceptable payment pattern between both parties. Therefore, the arbitrators denied IOM’s claims for damages.

Because IOM failed to fully perform under the contracts, the arbitrators awarded buy-in costs to Huron. The contracts provided for “Del. Basis/FOB Portland, IN.” The arbitrators determined IOM sought the subsequent change in delivery and it, consequently, should pay the difference with respect to the claimed additional dray charges. The arbitrators also concluded that Huron presented the necessary documentation to prove its claims for charges for fumigation services, which are normal and customary when insect contamination is identified in a grain shipment.

However, with respect to trucking and processing fees claimed by Huron in the amounts of \$12,517.20 and \$4,867.20, respectively, the arbitrators decided that Huron incurred these for its own account and the arbitrators declined to award them to Huron. The arbitrators further concluded that Huron’s claims for lost future customers and business in the total amount of \$204,495.33 were too speculative and could not be substantiated. The arbitrators also denied the claim of \$3,887.40 for bag inventory because that inventory was ultimately returned to Huron despite its argument that the inventory had lost its value by that time.

The arbitrators consequently decided upon the following award:

Huron is awarded the buy-in costs of \$2,875.38

Huron is awarded the dray interference costs of \$8,330.00

Huron is awarded the fumigation charges of \$4073.33

Huron is also awarded interest at the rate of 3.25% from Sept. 1, 2014 to the time of payment.

THE AWARD

Therefore, IOM is ordered to pay to Huron in the amount of \$15,278.71, plus interest at the rate of 3.25% from September 1, 2014 until the award is paid.

Decided: April 14, 2016

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

Dan DeRouchey, *Chair*
General Manager
Berthold Farmers Elevator LLC
Berthold, ND

Shaun Brooks
President
F.W. Cobs Company Inc.
St. Albans Bay, VT

Peter Carlson
Director
US Commodities, LLC
Minneapolis, MN