

National Grain and Feed Association Arbitration Decision

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March 24, 2020

CASE NUMBER 2809

PLAINTIFF: INTERSTATE COMMODITIES, INC.
TROY, NY

DEFENDANT: TRILLIUM FARM HOLDINGS, LLC.
JOHNSTOWN, OH

STATEMENT OF THE CASE

This case arises out of two lease agreements originally between Interstate Commodities, Inc (ICI) and Ohio Fresh Eggs, LLC (OFE) to operate warehouse facilities in Croton and LaRue, Ohio, beginning in August 2010. These agreements provided for ICI to originate the grain required by OFE to manufacture feed at mills in proximity to each warehouse facility for OFE's chicken egg laying flocks. In 2011, OFE sold its grain storage and feed manufacturing assets at these locations to Trillium Farm Holdings, LLC (Trillium). ICI and Trillium continued to perform under the agreements with Trillium assuming OFE's role as landlord of the facilities and purchaser of the grain.

ICI claims that Trillium refused to pay for 60,043.70 bushels of corn it purchased and received in the amount of \$219,679.27. Scales at the feed mills were used to calculate the amount of corn delivered from the warehouse facilities and the payments due to ICI. ICI states it notified Trillium in the summer of 2013 of an inventory audit that revealed the feed mill scales had under-recorded corn transfers to Trillium by over 200,000 bushels. According to ICI, Trillium requested that invoicing for the under-recorded corn transfers be delayed due to high corn prices and an inverted basis.

ICI delayed invoicing Trillium until December 2014, when it was required to do so to obtain federal warehouse licensing. ICI sent invoice no. K14981 (dated Jan. 5, 2015) to Trillium for \$219,679.27 for the shortage which had been adjusted to 60,043.70 bushels. ICI argues Trillium acknowledged on multiple occasions that it must pay for the grain shortage, and ICI made Trillium aware that invoice no. K14981 was for the grain shortage.

ICI states Trillium paid the invoice in full without objection and in due course through its normal weekly payments under the agreements. Later in 2015, at Trillium's request, ICI turned control of the warehouse facilities over to Trillium. According to ICI, during final settlements on transfer of ownership of the grain inventory at the facilities Trillium objected to its prior \$219,679.27 payment for the shortage in invoice no. K14981 and reduced the payment to ICI for the grain inventory by an equal amount. ICI argues Trillium's notice of objection was not timely because it was not presented until March 2016, over year after receipt and payment of the invoice.

Trillium disputes it is responsible for any alleged shortfall. According to Trillium, ICI operated and controlled the facilities during the time of the shortage and should be the only party responsible for grain lost on its own watch. Further, Trillium states ICI has not even proved there was a shortfall.

The parties dispute whether the feed mill scales were accurate and whether they were properly calibrated and maintained, and raised numerous other arguments, including the potential effect of use of the terms “shrink risk” in certain documents between the parties; how grain shortages are measured during inventory audits; whether it was ground or whole corn subject to the terms of the agreements; whether “unjust enrichment” applies; and even positions taken by the parties’ attorneys in past unrelated cases.

THE DECISION

After extensive discussion and consideration of the facts, arguments and documents provided by the parties, the arbitrators reached the following conclusions:

Adequate recordkeeping by the parties could have avoided this dispute. Either party should have been aware of the disputed shortage amounts through its own recordkeeping rather than only becoming aware of a difference after the state audit.

ICI sent invoice no. K14981 (dated Jan. 5, 2015) to Trillium for \$219,679.27 for the shortage which had been adjusted to 60,043.70 bushels. ICI argues Trillium acknowledged on multiple occasions that it must pay for the grain shortage, and ICI made Trillium aware that invoice no. K14981 was for the grain shortage.

Trillium does not dispute that it received and paid invoice no. K14981 without objection. If Trillium had an issue with the invoice, it should have disputed it immediately rather than making full payment and waiting a year to contest this amount and withhold funds in conjunction with transition of control of the facilities and full grain inventory. The timing of the actions taken by Trillium in this dispute was key to the arbitrators’ decision in favor of ICI.

THE AWARD

The arbitrators awarded \$219,679.27 in damages to Interstate Commodities, Inc. from Trillium Farm Holdings, LLC. The arbitrators declined to award any amount for interest or legal fees and costs.

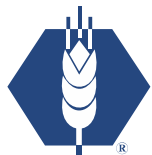
Decided: November 29, 2018

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

Karl Setzer, *Chair*
Operations Manager
Citizens, LLC
Charlotte, MI

Mitch Payne
Chief Operating Officer
Northwest Grain Growers
Dayton, WA

Jason Ballow
Commodity Trader
J.D. Heiskell & Co.
Elkhorn, NE



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March 24, 2020

ARBITRATION APPEAL CASE NUMBER 2809

APPELLANT/DEFENDANT: TRILLIUM FARM HOLDINGS, LLC

APPELLEE/PLAINTIFF: INTERSTATE COMMODITIES, INC.

DECISION OF THE APPEALS COMMITTEE

After review of the facts, arguments and documents of the case and the questioning afforded by a hearing with oral argument by the parties, the members of the appeals committee reached the following conclusions:

As stated by the original arbitration committee, proper recordkeeping by the parties could have avoided this dispute.

In oral argument during the hearing, Trillium Farm Holdings, LLC (Trillium) disputed it had ever paid invoice K14981 (dated January 5, 2015, in the amount of \$219,679.27), which conflicted with statements written in Trillium's appellant's brief (pp. 6-7). Interstate Commodities, Inc. (ICI) claimed in oral argument that Trillium paid invoice K14981 and then "clawed back" this amount during final settlements on transfer of ownership of the grain inventory at the facilities between the two parties during the fall of 2015. Yet ICI sent a letter to Trillium, dated March 4, 2016, with invoice K14981 attached, (Plaintiff's first argument, pp. 189-191) stating Trillium had defaulted in payment of invoice K14981. Neither party presented proof of payment of this invoice. Based upon the answers provided during the oral argument, the arbitrators are unable to determine the actual handling of invoice K14981. As stated by the original arbitrators, if Trillium had an issue with the invoice, it should have been disputed immediately.

Regarding the issue of corn shrink, the practice of weighing ground corn rather than whole corn was not in compliance with the 2010 agreement between the parties. However, the appeals committee concluded that neither party produced sufficient information to determine on which "side of the conveyor" this shrink occurred, i.e., between the warehouse or the feed mill. Thus, the appeals committee concluded that while shrink was very likely to have occurred at both the warehouse and at the feed mill, and there is no way to know exactly how much shrink occurred on either side, it is highly likely that the "net" of the shrink occurred as a result of the practice described below.

The 2010 agreement between the parties specifically stated the parties will weigh "corn" – not ground corn – to determine inventories and usage. Trillium admitted it did not weigh the corn as whole corn, and it received the benefit of the netted shrink weight of ground corn. Since Trillium provided the weight information to determine daily corn usage and, thereby, application of the pricing formula to ICI,

the use of ground corn weight – not corn weight – as specified in the 2010 agreement, resulted in Trillium receiving the benefit of this practice. ICI did not object to this practice during the time of its dealings with Trillium.

In ICI's appeal filings, it requested an additional amount for claimed shrink losses based upon weighing of ground corn rather than whole corn. The appeals committee determined this claim was based solely on theoretical shrink using academic studies and models. Without any documented weights or proof of actual loss, the appeals committee declined to award any additional damages to ICI.

AWARD

Therefore, the appeals committee reaffirms the original arbitration committee's award of \$219,679.27 in damages to Interstate Commodities, Inc. from Trillium Farm Holdings, LLC. The Appeals Committee declines to award any amount for interest or legal fees and costs to either party.

Decided: January 10, 2020

SUBMITTED WITH THE UNANIMOUS CONSENT OF THE MEMBERS OF THE APPEAL COMMITTEE, WHOSE NAMES APPEAR BELOW:

Sharon Clark, *Chair*
Sr. VP, Transportation &
Regulatory Affairs
Perdues AgriBusiness LLC
Salisbury, MD

Chuck Elsea
Chief Strategy Officer
The Redwood Group
Mission, KS

Mike Meyers
Director of Wheat By-Products
APEX LLC
Hamburg, NY

Ed Milbank
President
Milbank Mills, Inc.
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Steve Young
Grain Merchandiser
CHS Grainland
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