



National Grain and Feed Association Arbitration Decision

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

1400 Crystal Drive, Suite 260
Arlington, VA 22202

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

November 18, 2022

CASE NUMBER 2890

**PLAINTIFF: PARRISH AND HEIMBECKER, LTD.
WINNIPEG, MANITOBA, CANADA**

**DEFENDANT: KF KAMBIETZ FARMS
REGINA, SASKATCHEWAN, CANADA**

STATEMENT OF THE CASE

The Plaintiff and Defendant entered into Contract 260096, dated March 26, 2020, for a total of 2,000 metric tons (MT) of #3 Canadian Western Amber Durum Wheat (CWAD) for October 2020 delivery at CAD 266.39/MT. The contract was issued by the Plaintiff and confirmed by the Defendant by email.

It should be noted that in the CWAD market, price spreads between quality specs can be very volatile, and the Seller (Defendant) is required to decide on what grade spec was sold at the time the contract was made. In this case, the contract was issued as #3 CWAD, and under the contract, grade spreads were to be determined at time of delivery.

Between the contracting date and scheduled delivery, market prices for CWAD appreciated, crop quality improved greatly, and P&H's grade spreads between #1 CWAD and #3 CWAD narrowed significantly.

In late September and throughout October, the Defendant and Plaintiff had many discussions regarding the grade spread values. The Defendant specifically claimed the spreads were not equal to or near the competition's values. The Plaintiff then defended its pricing structure. The Plaintiff additionally offered alternatives to resolve the issue, including having another producer deliver #3 CWAD to the Plaintiff on the Defendant's behalf. This did occur in the amount of 238 MT.

On October 23, 2020, the Plaintiff sent a "Notice of Default" to Defendant stating that if the Defendant did not make delivery of the contracted quantities by end of business on Oct 31, Plaintiff would consider Defendant in default of the contract, and the Plaintiff would buy in a like amount of tonnage on Nov 2. Though communication continued between the parties, no deliveries were made by the Defendant.

On November 2, the Plaintiff bought in 1762 MT of #1 CWAD at CAD 312.32/MT and converted that down to #3 CWAD at the Plaintiff's grade spreads. An invoice was then created for \$74,455.07 + \$17,620.00 (Cancellation Fee) = \$92,075.07.

THE DECISION

The arbitrators noted that although there was significant discussion as to the legitimacy of the Plaintiff’s grades spreads, grading quality, alternate delivery options and overall market prices, at no time did the Defendant attempt to deliver a single bushel of his own grain to the Plaintiff under this contract. This decision put the Defendant clearly in default of the contract and negated all the other discussion regarding grade quality and grade spreads.

The Plaintiff’s action to buy in 2000 metric tons of #1 CWAD at their bid on November 2 provided more than adequate proof as to the market price on that day. Pursuant to NGFA Trade Rule 30(B), when “buy-in” is used in these rules, is it to mean an actual purchase of grain of like kind and quantity on the open market.

The adjustment from #1 to #3 reconciled the valued paid to the contractual grade required under the contract. The arbitrators concluded that Clause 7 of the contract clearly states that the Defendant shall be responsible for a fee of \$10/MT for grain that is bought in or cancelled because of Defendant’s non-delivery of grain against the contract. The arbitrators further determined that the Plaintiff should be awarded interest at the rate of 3.25% as per NGFA Arbitration Rule 6(F) to begin on the date the case was filed and continue until the date of this decision.

THE AWARD

Therefore, the arbitrators award the Plaintiff, Parrish and Heimbecker LTD, in the amount of CAD 96,749.07, including interest based on the following calculations:

Contract	Open Quantity	Contract Price	Cancellation Price	Difference /MT	Cancellation Fee/ MT	Total Cancellation Cost/MT	Due before Interest	Interest / day (3.25 annualized)	Days since 3/19/21 (date case was filed)	Total Due including interest as of 10/10/2022 (date of decision)
260096	1762	266.394	308.65	42.256	10.00	52.256	\$ 92,075.07	\$ 8.20	570	\$ 96,749.07
										\$ 96,749.07

Decided: October 10, 2022

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

Ed Ide, Chair
 Trade Executive & Logistics Manager
 Zen-Noh Grain Corporation
 Covington, LA

Taylor Warwick
 Merchandiser
 Highline Grain Growers Inc.
 Davenport, WA

Paxton Wood
 Grain Merchandiser
 Centerra Cooperative
 Ashland, OH