Arbitration Decision
National Grain and Feed Association

Arbitration Case Number 1715

Plaintiff: Commodity Specialists Company, Shawnee Mission, Kan.

Defendants: Bartlett and Company, Kansas City, Mo., and Commodity Traders Inc., Omaha, Neb.

Statement of the Case

This dispute was arbitrated upon the complaint of Commodity Specialists Company, the plaintiff-seller of sunflower meal to defendant-buyer, Bartlett and Company. The trade was brokered by Commodity Traders Inc. ("broker"), which was joined as a defendant. The plaintiff sought damages in the amount of $9,948 against both defendants. Bartlett and Company counterclaimed for damages against Commodity Specialists Company.

On June 22, 1993, Commodity Specialists Company sold Bartlett and Company 1,200 tons of 38 percent sunflower meal with a shipment period of Oct. 1, 1993 to March 31, 1994, at a price of $105 per ton F.O.B. Enderlin, N.D. The broker sent a "Confirmation of Purchase" and both seller and buyer sent confirmations.

Shipment on the contract began with the first load on Dec. 3, 1993. The protein level of this initial shipment was found to be 35 percent. Bartlett applied a discount on payment to Commodity Specialists Company amounting to 1 percent of the invoice price for each 1 percent of protein deficiency. On Jan. 14, 1994, Commodity Specialists Company communicated with Bartlett by telephone and letter (copy to broker). Commodity Specialists concurred that the contract provided for 38 percent protein; but it said that the contract was subject to change, in that "industry standard" for protein would apply at the time of shipment with no discount to the contract price. The following appeared in typewritten form in the "Remarks" section of the broker's "Confirmation of Purchase":

"200 tons per month - Oct as available. Industry standards to apply."

In a letter dated Jan. 17, 1994, the broker confirmed that Commodity Specialists Company had authorized the inclusion of the typewritten terms regarding "industry standards" on the broker's "Confirmation of Purchase." However, the broker also stated that there was no discussion or dialogue with the principals on the definition of "industry standards" at the time of the trade. Nor, according to the broker, was there any discussion relating to how this term would apply to future protein claims involving the buyer and seller.

Unable to agree on contractual obligations, Commodity Specialists Company and Bartlett and Company entered into an interim agreement on Feb. 11, 1994 to complete the shipment schedule. Under the interim agreement, both parties agreed to discount all 35 percent protein shipments at $5 per ton F.O.B. Enderlin, N.D., which resulted in an agreed adjusted interim price of $100 per ton. The buyer and seller also agreed that the dispute would be submitted to arbitration.[1]

The Decision

The arbitrators reviewed all of the arguments and materials submitted by the parties and found that the plaintiff, Commodity Specialists Company, defaulted on its contractual obligations by failing to provide sunflower meal with a protein level of 38 percent.

The central issue and focus of this dispute was entirely on the phrase "industry standards," which was contained in the broker's confirmation. The term "industry standards" did not appear in the confirmations sent by either the buyer or seller.

The term "industry standards" is not referred to in, or addressed by, the National Grain and Feed Association's (NGFA) Feed Trade Rules or the National Oilseed Processors' Rules.[2] The National Cottonseed Products Association Trade Rules, Chapter XI, Rules S-7 and S-9, do refer to sunflower meal. Rule S-7 provides that percentage of protein and process of manufacture shall be designated at time of sale. Rule S-9, Section 2 provides that a protein shortage settlement price shall be reduced in such proportion as the deficiency bears to the

[1] The dispute was subject to compulsory arbitration under Section 3(a)(1) of the NGFA Arbitration Rules and the NGFA Bylaws because both buyer and seller were NGFA Active members.

guarantee. NGFA Feed Trade Rule 18 sets forth labeling requirements for both bag and bulk shipments of feedstuffs, such as sunflower meal. The parties, however, did not present any evidence that the shipments were labeled for minimum protein, minimum fat, and maximum fiber as provided for in NGFA Feed Trade Rule 18.

The arbitrators concluded that the broker's (Commodity Traders Inc.'s) performance in this transaction was only perfunctory by reference to NGFA Feed Trade Rule 15 regarding a broker's function and responsibility. The seller and buyer presented conflicting evidence regarding the telephone communications with the broker. The arbitrators also concluded that the broker could have worked with both principals more explicitly at the time of the trade as to the implicit meaning to both the buyer and seller of the phrase "industry standards."

After reviewing all of the evidence presented by the parties, the arbitrators found that the term "industry standards" had no meaning as to the quality application on the parties' contract. Both the buyer and seller contracted for "38% Sunflower Meal" as shown on the broker's "Confirmation of Sale." Affidavits submitted as evidence in this case disclosed that sunflower meal trading entities, feed mill end users and the actual shipping processor of the sunflower meal (National Sun Industries Inc.) at that time were routinely discounting protein deficiencies on 38 percent protein contracts. At that time, this was occurring on a standard basis on shipping invoices at the rate of 1 percent of contract price for each 1 percent protein deficiency upon discovery of lower-protein, weather-damaged sunflower crops.

The Award

The arbitrators concluded that Commodity Specialists Company's claims against Bartlett and Company (the defendant-buyer) and Commodity Traders Inc. (the broker) should be denied in view of the facts.

The arbitrators found in favor of Bartlett and Company on its counterclaim asserted against Commodity Specialists Company. The arbitrators also found that Bartlett and Company's calculations actually understated its claims based upon the evidence actually presented.[3] Therefore, Bartlett and Company is awarded actual damages in the amount of $5,135 against Commodity Specialists Company. No interest on the award shall be due if paid by Commodity Specialists Company within fifteen (15) days of receipt of this decision.

Submitted with the unanimous consent and approval of the arbitration committee, whose names are listed below:

Victor A. Oberting, Jr., *Chairman*
Interstate Commodities Inc.
Troy, N.Y.

Jack Krause
Harvest States Cooperatives
Sioux Falls, S.D.

Paul Erickson
Cargill Incorporated
West Fargo, N.D.

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[2] Both the buyer and seller were NGFA Active members. The NGFA Trade Rules are applicable to trades between member firms "unless otherwise and specifically agreed to at the time of the trade, or subsequent thereto." See Preamble to the NGFA Feed Trade Rules; and Article II of the NGFA Bylaws. The broker was not a NGFA member and its "Confirmation of Sale" provided that "[t]his contract is subject to the specific trade rules of whatever commodity involved." The buyer's purchase confirmation referenced the rules of the "Nat'l Cottonseed Products Assoc."

[3] The arbitrators calculated actual damages due Bartlett and Company as follows:

- 1,200 tons at $8.29 per ton (3 percent of invoice price of $105) equals $9,948 in gross damages.

• Gross Amount due Bartlett from Commodity Specialists Company	$9,948
Less deductions/offsets already taken by Bartlett of $4,813	
83.72 tons X $8.29 per ton on USLX 5708	$ 694
823.81 tons X $5 per ton	$4,119
Total net balance due Bartlett and Company	**$5,135**

- The net damages due Bartlett break down as follows:

  a) 823.81 tons X balance of $3.29 per ton not previously deducted by Bartlett = $2,710

  b) 292.47 tons X $8.29 per ton not previously deducted by Bartlett on payment of four invoices to Commodity Specialists Company. These items are referenced in the documents designated as Exhibit 18 of Bartlett and Company's response to Commodity Specialists Company's first argument and are:

1. SOO 73683	72.63 tons
2. MILW 100997	72.35 tons
3. MILW 101556	74.15 tons
4. TLCX 31242	73.34 tons
Total	**292.47 tons**