



Arbitration Decision

National Grain and Feed Association

March 25, 1999

Arbitration Case Number 1816

Plaintiff: The Andersons Inc., Maumee, Ohio

Defendant: Rex Crotser, Mendon, Mich.

Statement of the Case

This dispute involved a claim by The Andersons Inc., the plaintiff, for damages arising from the alleged failure of Rex Crotser, the defendant, to pay outstanding receivables after cancellation of cash grain contracts.

Crotser contended, among other things, that the contracts were not enforceable because of a "mutual mistake of fact." Likewise, Crotser contended that The Andersons should not be able to collect damages because the company routinely engaged in hedging on the Chicago Board of Trade.

The Andersons operates grain elevators for the purpose of buying, storing and selling grain. One of its suppliers was Crotser, a grain producer who entered into multiple contracts with The Andersons over a period of several years¹. The parties entered into eight contracts in 1995 for the delivery of Crotser's 1995 corn crop.

In Spring 1996, The Andersons' representatives said they began attempts to reach Crotser to discuss his open contract obligations with him. Throughout the next few months the contracts were canceled with the approval of Crotser and/or his agent². Total cost to cancel the eight contracts was \$537,575.09, plus a cancellation charge of 5-cents per bushel or \$22,300, for a total of \$559,875.09.

The Andersons filed its arbitration complaint with the National Grain and Feed Association (NGFA) on March 31, 1997. Each of the contracts between the parties provided in numbered item 13 of the "Standard Purchase Contract Terms" that "any disputes or controversies arising out of this contract shall be arbitrated by the National Grain & Feed Association, pursuant to its arbitration rules."

When Crotser failed to return the NGFA Contract for Arbitration³ or pay the required arbitration service fee, The Andersons filed an action in a Michigan federal court to compel Crotser to arbitrate the dispute. On April 2, 1998, U.S. District Judge Gordon J. Quist entered an order⁴ directing the parties to proceed with NGFA arbitration. The court, in dismissing a counterclaim asserted by Crotser, also ruled that the contracts were not subject to regulation under the Commodity Exchange Act or Commodity Futures Trading Commission regulations.

The Decision

The arbitrators thoroughly reviewed the submissions made by both parties and arrived at the conclusions set forth below.

Crotser entered into eight contracts with The Andersons during 1995, representing a total of 446,000 bushels. The

¹ Crotser's farming operations during 1996 included approximately 4,100 acres of seed and commercial grain production in Michigan and North Carolina. Crotser had forward contracted and delivered 850,000 bushels of corn and soybeans to The Andersons from 1991 through 1994.

² It was undisputed that Rob Fisher served as Crotser's contracting agent and marketing advisor during the periods covered by the contracts.

³ Rule 5 of the NGFA Arbitration Rules.

⁴ *The Andersons, Inc. v. Rex M. Crotser*, Case No. 1:97-CV-593 (W. D. Mich., S. Div., Apr. 2, 1998)(order and opinion granting The Andersons' motion and dismissing Crotser's counterclaim).

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contracts clearly stated the terms and conditions of the transactions. While Crotser failed to sign two of the contract confirmations⁵, the evidence showed that he did in fact enter into all of the contracts. The Andersons' confirmations of the oral agreements reached between the parties complied with both general commercial law applicable to merchants in Michigan and with the express provisions of NGFA Grain Trade Rule 6.

Of the eight contracts, seven were hedge-to-arrive (HTA) contracts and one was a "bushels only" contract. All eight contracts were legitimate cash forward contracts and an accepted trade practice. The evidence showed that Crotser had a history of entering into HTA and "bushels only" cash contracts with The Andersons.

Further, The Andersons properly inquired of Crotser and/or his agent of his intentions regarding these contracts prior to cancellation. The Andersons canceled the contracts in response to instructions of Crotser and/or his agent, pursuant to the contract terms, which provided in numbered item 5 of the "Standard Purchase Contract Terms" that:

"Failure to fulfill this contract will result in minimum contract cancellation charges to Seller, the total of which will be the difference between the contract price and the replacement cost at the time of cancellation, plus the cancellation charge in effect. Seller shall also be liable for The Andersons attorney fees, costs of collection plus interest." [Emphasis added.]

Likewise, the contracts expressly incorporated the NGFA Grain Trade Rules. The arbitrators concluded that Crotser failed to comply with NGFA Grain Trade Rule 10 when he became aware that he would not fulfill the contracts. In contrast, The Andersons acted in conformance with NGFA Grain Trade Rule 10 by canceling the contracts when it learned of Crotser's default.

The evidence disclosed that Crotser and/or his agent were involved in every aspect of both entering into and canceling these transactions. The arbitrators concluded that the evidence clearly showed that Crotser even had acknowledged the debt he owed arising out of the contract cancellations.

The arbitrators also concluded that The Andersons' hedging practices were irrelevant to the damages arising from the breach by Crotser of his contracts with The Andersons. The parties' cash contracts were independent of any futures posi-

tion that either party could have taken on a regulated exchange. Further, a typical grain elevator entering into a forward contract to purchase grain would, if it chose to protect itself from price fluctuations in the cash marketplace, ordinarily take a futures position that is equal and opposite from one's position in the cash marketplace. The traditional hedging transaction does not protect the cash purchaser from the risk that his cash seller will not deliver on the cash contracts. Indeed, the futures position is based on the premise that the futures position will be offset by execution of an opposite futures transaction (the lifting of the hedge) when the cash seller delivers. Crotser's argument that any hedging positions entered into by The Andersons substituted for his nonperformance reflected a fundamental misstatement of the function of hedging. Indeed, when a cash seller defaults, the buyer who has an outstanding hedge still is faced with lifting the hedge and purchasing other grain to replace the defaulted cash contract.

Crotser contended that "his status as a *seed corn* grower... establishes that there never was a contract between Crotser and The Andersons due to a mutual mistake of fact." The arbitrators agreed with the federal court that Crotser's seed corn activities did not invalidate his contracts with The Andersons. As Judge Quist wrote:

"On June 18, 1995, after having entered six of his eight contracts with The Andersons, Crotser entered a separate contract with a seed company...to use his land to grow corn from Cargill's seed....Crotser performed under the Cargill contract rather than under his contract with The Andersons."

Crotser and/or his agent may have made mistakes by entering into too many contracts, but those mistakes did not relieve him of his contractual obligations to perform and deliver the grain pursuant to his contracts with The Andersons.

The arbitrators also agreed that The Andersons were entitled to an award of attorney fees under the express terms of the contracts entered into between the parties. Since the contracts clearly contained an arbitration clause, the arbitrators concluded that attorney fees and costs arising from the court case to compel Crotser to proceed with arbitration were a direct result of Crotser's noncompliance with his agreement to arbitrate under the contracts. Crotser did not contest the amount of attorney fees sought by The Andersons.

As a result, Crotser failed to fulfill the eight contracts at issue in this case, and was liable for all damages caused by the cancellation of these contracts, which are summarized on page 3.

⁵ Contract Confirmation Nos. 25778 and 27660.

Contract No.	Bushels of Corn	Contract Cancellation Date	Net Value Per-Bushel at Cancellation	Per-Bushel Cancellation Price	Per-Bushel Cancellation Fee	Amount Due (or Credit Owed) Crotser
24739	90,000	June 1, 1996	\$2.62625	\$4.74	\$0.05	\$194,737.50
24203	36,000	June 26, 1996	\$2.44500	\$4.74	\$0.05	\$ 84,420.00
25778	40,000	June 26, 1996	\$2.55250	\$4.74	\$0.05	\$ 89,500.00
24745	90,000	July 29, 1996	\$0.11417	\$0.00 ⁶	\$0.05	(\$ 5,775.00)
24744	10,000	Oct. 1, 1996	\$1.29750	\$2.955	\$0.05	\$ 17,075.00
24903	87,372.58	Oct. 1, 1996	\$1.205	\$2.955	\$0.05	\$157,270.65
27600	2,627.42	Oct. 1, 1996	\$1.895	\$2.955	\$0.05	\$ 2,916.44
27537	90,000	Nov. 27, 1996	\$2.49	\$2.735	\$0.05	\$ 26,550.00
All Contracts	446,000					\$566,694.59
Less Additional Credit Due Crotser ⁷						(\$6,819.50)
Primary Contract Damages Due Andersons						\$559,875.09

The Award

Therefore it is ordered that:

◆ The Andersons Inc. is awarded a total judgment of \$559,875.09 against Rex Crotser for actual damages resulting from market differences and contract cancellation fees. Compound interest shall accrue from the date of default until paid in full at a rate of 9.25 percent per annum. For purposes of calculating interest, the damages are itemized as follows:

- a) The sum of \$187,918 shall accrue interest from June 1, 1996 until paid in full. This represented damages due on Contract No. 24739, less a credit to Crotser for proceeds from grain sales withheld;
- b) The sum of \$168,145 shall accrue interest from June 26, 1996 until paid in full. This represented damages due on Contract Nos. 24203 and 25778, less a credit to Crotser for cancellation of Contract No. 24745;
- c) The sum of \$177,262.09 shall accrue interest from Oct. 1, 1996 until paid in full. This represents damages due on Contract Nos. 24744, 24903 and 27600;
- d) The sum of \$26,550 shall accrue interest from Nov. 27, 1996 until paid in full. This represents damages due on Contract No. 27537; and

◆ The Andersons Inc., is awarded a judgment of attorney fees and costs against Rex Crotser of \$45,038.52. Compound interest on this amount shall accrue from April 30, 1998 until paid in full at the rate of 9.25 percent per annum.

Submitted with the unanimous agreement and consent of the arbitrators, whose names are listed below:

Paul Coppin, Chairman
General Manager
Hunter Grain Co.
Hunter, N. D.

Jeff Bechard
Grain Division Manager
Farmway Co-op Inc.
Beloit, Kan.

Tom Hall
Vice President
The Hall Grain Co.
Akron, Colo.

⁶ While the contract was unpriced at the time of cancellation, Crotser was due a credit as part of the net formula pricing activity for this contract.

⁷ It was undisputed that Crotser was owed a credit by The Andersons for proceeds from grain sales withheld.