Arbitration Decision
National Grain and Feed Association

March 25, 1999

# Arbitration Case Number 1903

**Plaintiff:** Staley Grain Inc., Decatur, Ill.

**Defendants:** Wilson Farm, Rodney Wilson and Debbie Wilson, on their own behalf and as agents and attorneys-in-fact for A.J. Rudasill and Ruth Rudasill, and Virginia Langellier, dba Birkbeck Farm, and Charles W. Guthrie, Jr., Clinton, Ill.

## Statement of the Case

This dispute involved flexible hedge-to-arrive (HTA) contracts entered into by the defendants as sellers (collectively referred to as "Wilsons" or "Seller") and Staley Grain Inc. (referred to as either "Staley" or "Buyer").

The contracts[1] originally were entered into early in 1995, and provided for the delivery by Wilsons of 153,057 bushels of corn and 16,000 bushels of soybeans to Staley's grain elevator in Wapella, Ill.

Each of the contracts expressly incorporated the "Grain Trade Rules of the National Grain and Feed Association" and specified the following: Contract number, contract date, quantity in bushels, commodity grade, pricing formula (based on a Chicago Board of Trade reference price and reference month), a specific shipment period (*e.g.*, May 1, 1996 to May 31, 1996), and delivery location. The contracts also expressly provided that: "[c]an be rolled to the next option month at existing market spread plus a 2 cent service charge will be assessed." Each of the original contract confirmations were signed by Debbie or Rodney Wilson, who signed on their own behalf and as agents or attorneys-in-fact for their landlords.

Grain prices increased dramatically during 1995. Nevertheless, Staley submitted evidence that Wilsons, on the advice of their marketing consultant, "rolled" the reference price and delivery dates on the 1995 HTA contracts to various months in 1996. The Wilsons, on or about April 15, 1996, contracted to roll most of the contracts to a July 1996 reference price and late 1996 delivery dates.

Staley on May 20, 1996 received a letter dated May 16, 1996 from an attorney for Wilsons which, among other things, provided that:

*"Without acknowledging any liability the Wilsons hereby demand that you mitigate any damages you may claim against the Wilsons in the manner you deem most appropriate."*

Upon receiving this notification, Staley proceeded on May 20 and 21, 1996 to cancel the outstanding HTA contracts with Wilsons by purchasing offsetting grain futures contracts on the Chicago Board of Trade.

Staley notified Wilsons by letter dated May 30, 1996 of the resulting damages, which were based on the difference in HTA contract price and replacement costs, plus a cancellation fee as provided for in the contracts. Staley's total claim for damages was $373,025.26, plus interest, collection costs and attorneys' fees.

[1] Staley Grain, Inc. Corn Contract Nos. 3193, 3231, 3332, 3354, 3508, 3544, 3571, 3572, 3619, 3244, 3335, 3190, 3228, 3352, 3416, 3511, 3191, 3229, 3331, 3201, 3232, 3333, 3192, 3230, 3353, 3421, 3513, 3189, 3227, 3351, 3415, 3510; **and** Staley Grain, Inc. Soybean Contract Nos. 3247, 3381, 3425, 3534, 3249, 3383, 3248, 3385, 3428, 3385, 3428, 3251, 3386, 3429, 3253, 3388, 3389, 3431, 3433, 3252, 3387, 3430, 3246, 3382, 3540, 3426.

Wilsons on May 14, 1996 filed a "class-action" complaint in an Illinois federal district court[2] against Staley and other companies, asserting that HTA contracts were sold in violation of various federal laws and regulations. Staley filed a motion to stay the proceedings and compel arbitration of the claims asserted against it based upon arbitration provisions[3] contained in the parties' contracts. U.S. District Court Judge Blanche M. Manning subsequently entered an order compelling arbitration of the parties' dispute before the National Grain and Feed Association.

Wilsons' contended that this case "arises from the fraudulent and deceptive activities of Staley in the sale of certain hybrid contracts commonly known as multiple year hedge-to-arrive (HTA) contracts." Wilsons continued to assert that they were not subject to NGFA arbitration "due to a clearly erroneous ruling of the United States District Court for the Northern District of Illinois." Further, they claimed they were misled and not aware of the market risk associated with the contracts. Wilsons contended they should not be liable to Staley.

## The Decision

At the outset, the arbitrators concluded that the contracts between the parties clearly provided for NGFA arbitration of the disputes at issue in this case. Likewise, the contracts clearly provided that the NGFA Grain Trade Rules were applicable. The defendants failed to provide any convincing evidence as to why the express provisions of the parties' contracts should be disregarded. Thus, the dispute between the parties was a matter subject to arbitration before the NGFA.

The evidence showed that Staley had purchased grain from Wilsons beginning as early as 1991, and that the Wilsons entered into numerous HTA and other contracts with Staley from 1991 through 1994, which included: cash or "purchase" contracts, "deferred-purchase" contracts, "basis-purchase" contracts and "hedge-to-arrive" contracts. Both Staley and Wilsons had a history of doing business with each other and honoring the terms of previous contracts.

Both parties should have expected full performance in accordance with the terms of the HTA contracts given their past "arms-length" business relationship. The arbitrators concluded that Staley did not owe any special duties to Wilsons to protect them from their own business and marketing decisions. The arbitrators also concluded that, based upon the evidence presented, the marketing consultant referenced in the arguments was an agent of Wilsons. Staley was not responsible for the advice or representations made to Wilsons by their marketing consultant.

Staley canceled all of the pertinent contracts and acted in conformance with NGFA Grain Trade Rule 10(c)[4] immediately upon receiving written instruction from Wilsons' attorney demanding mitigation of damages. The result was the cancellation of contracts involving 153,075 bushels of corn and 16,000 bushels of soybeans. The market difference and contracted-for cancellation fee totaled $373,025.26 on May 21, 1996.

The contracts were categorized as follows for purposes of determining damages at cancellation:

| Account Name | Commodity | Bushels | Damages |
|---|---|---|---|
| Wilson Farm Account | Corn | 101,350 | $221,352.25 |
| | Soybeans | 3,500 | 5,243.25 |
| | | | $226,595.50 |
| Wilson Farm Account - Stapleton Farm | Corn | 1,200 | $ 3,135.38 |
| Wilson Farm Account - Birkbeck Farm | Corn | 10,300 | $ 25,366.50 |
| | Soybeans | 2,250 | 3,244.50 |
| | | | $ 28,611.00 |
| Wilson Farm Account - Guthrie | Corn | 2,400 | $ 6,300.00 |
| | Soybeans | 600 | 880.00 |
| | | | $ 7,180.00 |
| Rodney & Debbie Wilson | Corn | 2,400 | $ 6,264.00 |
| | Soybeans | 1,450 | 2,069.50 |
| | | | $ 8,333.50 |
| Wilson Farm Account - A.J. & Ruth Rudasill | Corn | 31,950 | $ 78,746.25 |
| | Soybeans | 7,500 | 10,815.00 |
| | | | $ 89,561.25 |
| Wilson Farm Account - Burton & Reinhold | Corn | 3,475 | $ 8,584.13 |
| | Soybeans | 700 | 1,024.50 |
| | | | $ 9,608.63 |
| Total All Contracts | | 169,075 bu. | $373,025.26 |

The arbitrators concluded that Staley acted in accordance with the terms of the original contracts when complying with Wilsons' various requests to roll the pricing and delivery months on contracts. Even though Staley failed to immediately send out written confirmations of Wilsons' "rolling" from May 1996 to July 1996 terms, Wilsons admitted request-

[2] ***Wilson Farm, et. al. v. ADM Investor Services, Inc., et al.***, Case No. 96C 2879, U.S. District Court for the Northern District of Illinois, Eastern Division.

[3] The contracts entered into by the parties contained the following provision: "Staley Grain, Inc. is a member of the National Grain and Feed Association. If the other party is not a member, he agrees to consent in writing to the jurisdiction of the National Grain and Feed Association as provided in Section 3(a)(2) of the Association's Arbitration Rules."

[4] The non-defaulting buyer has three options, which include to "buy-in for the account of the Seller the defaulted portion of the contract" or to "cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day."

ing that the specified contract terms be rolled from May to July[5]. Staley performed the "rolls" as requested by Wilsons' and at the time requested. Thus, the arbitrators found that the parties' actual conduct in conformance with the underlying contracts also served as sufficient evidence in this case.

All of the claims and arguments of the parties were thoroughly reviewed and considered by the arbitrators, even if not addressed expressly in this written decision. Thus, this decision was intended to resolve all issues between the parties on the transactions at issue in this case.

## The Award

The arbitrators concluded that Staley Grain Inc. was entitled to its claim of damages for contract cancellation, including the cancellation fees referenced in the parties' contracts. In addition, the arbitrators concluded that Staley was entitled to interest on the award. The arbitrators concluded that the claims and arguments asserted by the defendants were not supported by the evidence. Each party was directed to bear its respective fees and costs associated with any legal or attorney fees incurred as part of this arbitration case before the NGFA.

Therefore, it is ordered that:

- Staley Grain Inc. is awarded judgment against Wilson Farm, Rodney Wilson and Debbie Wilson in the amount of $247,673.01, plus compound interest at the rate of 8 percent per annum from May 21, 1996 until all amounts are paid in full. The full amount of the judgment shall be considered a joint and several liability as to these defendants;

- Staley Grain Inc. is awarded judgment against Wilson Farm, Rodney Wilson, Debbie Wilson, A.J. Rudasill and Ruth Rudasill in the amount of $89,561.25, plus compound interest at the rate of 8 percent per annum from May 21, 1996 until all amounts are paid in full. The full amount of the judgment shall be considered a joint and several liability as to these defendants;

- Staley Grain Inc. is awarded judgment against Wilson Farm, Rodney Wilson, Debbie Wilson and Virginia Langallier, dba Birkbeck Farm, in the amount of $28,611, plus compound interest at the rate of 8 percent per annum from May 21, 1996 until all amounts are paid in full. The full amount of the judgment shall be considered a joint and several liability as to these defendants; and

- Staley Grain Inc. is awarded judgment against Wilson Farm, Rodney Wilson, Debbie Wilson and Charles W. Guthrie Jr. in the amount of $7,180, plus compound interest at the rate of 8 percent per annum from May 21, 1996 until all amounts are paid in full. The full amount of the judgment shall be considered a joint and several liability as to these defendants.

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

**Larry J. Hammond**, *Chairman*
President
Auglaize Farmers/Provico
Wapakoneta, Ohio

**Brad Haugeberg**
General Manager
Sun Prairie Grain
Minot, N.D.

**Robert Kelly**
Vice President
United Cooperative Services
Sidney, Neb.

[5] The arbitrators viewed the situation presented by the facts of this case different than an ordinary contract amendment. Here, the parties' original contract provided for "rolling." Thus, the "rolling" was viewed no different than where parties set the "basis" on a contract where the original contract provides a deadline for taking such action.