



November 18, 2022

CASE NUMBER 2886

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

**DEFENDANT: C2 FARMS
REGINA, SASKATCHEWAN, CANADA**

STATEMENT OF THE CASE

The Plaintiff and Defendant entered into two contracts for Canadian Western Amber Durum Wheat (CWAD) totaling 3500 metric tons (MT) for October 2020 delivery: Contract 257790, dated March 18, 2020, for 2500 MT of #3 CWAD at CAD 262.71/MT and Contract 260691, dated March 31, 2020, for 1000 MT of #3 CWAD on March 31, 2020, at CAD 266.39/MT. Both contracts were issued by the Plaintiff and confirmed via email by Defendant. It should be noted that in the CWAD market, price spreads between quality specs can be very volatile, and the Seller (Defendant) was required to decide on what grade spec was sold at the time the contract was made. In this case, both contracts were issued as #3 CWAD, and pursuant to the contract, grade spreads were to be determined at time of delivery.

After confirmation of contract # 260691, the Defendant suggested through text messaging that he wanted to lock in the grade spread. However, the arbitrators noted that no other conversation was documented or indicated and no amendment to the contract was presented to indicate that a higher grade quality above 3 CWAD was sold. The arbitrators consequently reviewed this arbitration based upon the presented contract for #3 CWAD.

On October 1, 2020, the Plaintiff contacted the Defendant requesting that delivery begin on October 7, 2020. At that time, the Defendant argued that the #1 and #2 grade spreads offered by the Plaintiff were not representative of the grade premiums paid by the market competition.

The Plaintiff and Defendant communicated on and off throughout the month of October with the Defendant demanding that the Plaintiff pay higher premiums. The Plaintiff defended its premiums and offered alternative options for the Defendant to execute on delivery.

On October 23, 2020, the Plaintiff sent a "Notice of Default" to the Defendant exclaiming that if the Defendant did not make delivery of contracted quantities by end of business on October 31, 2020, the Plaintiff would consider Defendant in default of contract, and Plaintiff would buy in a like amount of tonnage on November 2, 2020. No deliveries were made by Defendant.

On November 2, 2020, Plaintiff bought in 3500 MT of #1 CWAD at CAD 312.32/MT and converted that down to #3 CWAD at Plaintiff's grade spreads. The Plaintiff then created invoices for \$114,850 + \$25,000 (Cancellation Fee) = \$139,850.00 and \$42,256 + \$10,000 (Cancellation Fee) = \$52,256.

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 price, at no time did the Defendant attempt to deliver a single bushel of grain to Plaintiff under these contracts. This decision by the Defendant put it clearly in default of the contract and negated discussion of the other issues. The dispute in the eyes of the Defendant may have been for "unfair" grade spreads while the real dispute became about the non-delivery of bushels against contracted commitments.

THE DECISION

The arbitrators ruled in favor of the Plaintiff, concluding that its action to buy in 3500 MT of #1 CWAD at bid on November 2, 2020, was consistent with NGFA Trade Rules and Plaintiff provided more than adequate proof as to the market price on that day. The adjustment from #1 to #3 at the Plaintiff's current grade spread reconciled the valued paid for #1 CWAD to the contractual #3 CWAD grade required under the contracts.

The arbitrators also decided that Clause 7 of Plaintiff's contract clearly states that Defendant shall be responsible for a fee of \$10/MT in response to grain that is bought in or cancelled because of Defendant's non-delivery of grain against the contract.

And the arbitrators further decided that Plaintiff should be awarded interest at the rate of 3.25% pursuant to 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 202,335.80, 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 2/19/21 (date case was filed) | Total Due including interest as of 10/10/2022 (date of decision) |
|----------|---------------|----------------|--------------------|----------------|----------------------|----------------------------|---------------------|----------------------------------|--|--|
| 257790 | 2500 | 262.71 | 308.65 | 45.94 | 10.00 | 55.94 | \$ 139,850.00 | \$ 12.45 | 598 | \$ 147,295.10 |
| 260691 | 1000 | 266.39 | 308.65 | 42.26 | 10.00 | 52.26 | \$ 52,260.00 | \$ 4.65 | 598 | \$ 55,040.70 |
| | | | | | | | | | | |
| | | | | | | | | | | \$ 202,335.80 |

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