



National Grain and Feed Association

Arbitration Decision

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November 17, 2011

Arbitration Case Number 2435

Plaintiff: Hayhoe Mills Ltd., Woodbridge, Ontario, Canada

Defendant: Rowland Seeds Inc., Lethbridge, Alberta, Canada

Statement of the Case

This case concerned a dispute between Hayhoe Mills Ltd. (Hayhoe) and Rowland Seeds Inc. (Rowland). Hayhoe is a producer of wheat products, including organic wheat flour, incorporated in Ontario; Rowland is a supplier of organic wheat incorporated in Alberta. The parties had been doing business regularly for a number of years prior to the events at issue in this case. The dispute involved two alleged agreements between the parties (contract numbers 1065 and 1299) for the purchase of #2 organic soft white spring wheat.

Contract Number 1065

Hayhoe alleged that on or about Sept. 27, 2007, the parties entered into contract number 1065, which provided that Rowland sell and deliver 150,000 bushels of #2 organic soft white spring wheat to Hayhoe at a price of \$11 per bushel by the end of May 2008. The contract was signed by Rowland's office manager. According to Hayhoe, Rowland returned it by facsimile on Sept. 27. Hayhoe stated that commencing in October 2007 and proceeding over the next few months, Rowland delivered a total of 81,947.42 bushels of wheat under the contract. Hayhoe claimed that Rowland ultimately failed to complete delivery under this contract. Hayhoe also claimed that because the market price of the wheat continued to climb during this time, it was required to obtain the remaining bushels from other suppliers at significantly higher spot market prices (ranging from \$26.80 to \$33.42 per bushel), resulting in total alleged damages of \$1,356,162.36. In its written arguments, Hayhoe conceded that it withheld partial payment for the delivered bushels in the amount of \$264,762.20, leaving an initially claimed balance due of \$1,091,400.16.

In response, Rowland argued that contract number 1065 did not constitute a valid contract between the parties because Rowland's office manager, who had signed the contract, did not have the authority to do so. Rowland stated that other contract documents between the parties bore the signature of Rowland's principle, not the office manager. According to Rowland's principle, the first time he saw contract number 1065 with the office manager's signature was in March 2008. Rowland claimed that in its delivery of the approximately 81,947 bushels, it had been operating under the assumption that the parties had a verbal agreement that did not entail obligations beyond the wheat actually delivered. In support of its argument, Rowland referred to prior dealings between the parties, alleging that the largest contracted sale between them prior to this dispute was for 60,000 bushels, and that past transactions between the parties consisted of both written contracts and oral agreements. In its written arguments, Rowland presented its own claim against Hayhoe for the delivered bushels initially in the amount of \$285,274.61.

Contract Number 1299

Rowland alleged that on Dec. 31, 2007, Hayhoe submitted another signed contract (number 1299) to Rowland for 150,000 bushels of #2 organic soft spring wheat at \$16 per bushel, with a delivery period of October 2008 to May 2009. Rowland claimed that it signed this contract on Jan. 6, 2008 and returned it to Hayhoe. According to Rowland, Hayhoe subsequently breached this agreement, resulting in alleged damages of \$2,400,000. Hayhoe denied receiving a contract signed by Rowland. Hayhoe claimed that the first time Rowland purported to deliver the signed copy of this contract was after the dispute related to contract number 1065 had arisen.

The Decision

The arbitrators closely considered the extensive arguments and documentation submitted in this case. In addition, a full oral hearing was conducted, during which the parties presented oral argument and witness testimony. The arbitrators deliberated thoroughly, both in-person in conjunction with the hearing and by numerous telephone conferences, in the review of this case.

Contract Number 1065

In the controversy concerning contract number 1065, the contract was signed by a long-term Rowland employee with several years of experience in the grain business. This individual was entrusted with the duty of regular communication with buyers and was responsible for carrying out the details of grain contractual agreements. The arbitrators determined that this employee had apparent, if not actual, authority to enter into the contract, and that it was reasonable and appropriate for Hayhoe to proceed on that basis. Further, Rowland did not convince the arbitrators that it was unaware of the existence of contract number 1065, which was signed by both buyer and seller in accordance with NGFA Grain Trade Rule 3 [Confirmation of Contracts]. Therefore, the arbitrators concluded that it was a valid contract between the parties. However, neither party produced sufficient evidence of price discovery for #2 organic wheat for the applicable buy-in time period. Hayhoe's claim for damages was based upon multiple contracts and various prices over an extended period of time. Consistent with NGFA Grain Trade Rule 28(3), the arbitrators determined that March 27, 2008 was the applicable buy-in time period based upon the documents and evidence provided. The arbitrators, through research with local organic cash wheat buyers, as well as the Canadian Wheat Board, determined that a buy-in price of \$31 per bushel applied on this date in their assessment of this contract.

Regarding the payments withheld by Hayhoe under contract number 1065, originally, Hayhoe had claimed they amounted to \$264,762.20 and Rowland had claimed they amounted to \$285,274.61. During the oral hearing in this case, however, additional evidence was subsequently submitted without objection by either party that indicated the correct amount due as withheld payments was \$202,957.35. The arbitrators agreed that this amount was due to Rowland. The arbitrators declined to deduct an amount claimed by Hayhoe for "cleaning charges," finding it to be unsubstantiated.

Contract Number 1299

Contract number 1299 (dated Dec. 31, 2007) was signed by Hayhoe and submitted to Rowland. Rowland signed and dated the contract Jan. 6, 2008. Rowland claimed it returned the signed contract and produced phone records as proof of fax transmission from its office to Hayhoe Mills on Jan. 9. Hayhoe claimed it did not receive the signed contract. The contract called for completion of delivery in May 2009. On March 17, 2009, Rowland raised concern through legal counsel regarding delivery on the contract. On April 20, through legal counsel, Hayhoe responded with its position that contract number 1299 was not a binding contract. The arbitrators concluded contract number 1299 constituted a valid agreement between the parties. Both parties had signed the contract. Here again, however, neither party produced adequate evidence regarding price discovery for #2 organic wheat in the time period applicable to this contract of April 2009. The arbitrators, through research with local organic cash wheat buyers, as well as the Canadian Wheat Board, determined that a liquidation price of \$9.50 per bushel applied in their assessment of damages in this contract.

The Award

On contract number 1065, the arbitrators awarded damages to Hayhoe in the amount of \$1,361,051.60 for under-delivery of 68,052.58 bushels, with a buy-in price of \$31 per bushel to replace the bushels contracted at \$11 per bushel, plus interest from March 27, 2008.

On contract number 1299, the arbitrators awarded damages to Rowland in the amount of \$975,000 for non-performance on 150,000 bushels at \$16 per bushel, with a liquidation price of \$9.50 per bushel, plus interest from April 20, 2009.

The arbitrators also awarded damages to Rowland for the withheld payments in the amount of \$202,957.35, plus interest from April 1, 2008.

Interest was assessed at 3.25 percent per annum pursuant to NGFA Arbitration Rules 8(m).

Due Hayhoe from Rowland on Contract Number 1065:
\$1,361,051.60
+ 161,942.26 (interest from March 27, 2008 through Oct. 1, 2011)

Due Rowland from Hayhoe on Contract Number 1299:
\$ 975,000.00
+ 79,448.91 (interest from April 20, 2009 through Oct. 1, 2011)

Due Rowland from Hayhoe on Withheld Payments:
\$ 202,957.35
+ 24,049.02 (interest from April 1, 2008 through Oct. 1, 2011)

Total Due Hayhoe from Rowland = \$241,538.53 USD, plus interest beginning on Oct. 1, 2011, at 3.25 percent per annum, until the judgment is paid. (All values are based on US Dollars.)

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

Joe Kapraun, *Chair*
Manager, Grain Marketing Division
Growmark, Inc.
Bloomington, Ill.

Dan DeRouchey
General Manager Berthold
Farmers Elevator Berthold,
N.D.

Ryan McKnight
Grain Merchant
Linear Grain Inc.
Carman, Manitoba

Dated: October 24, 2011