National Grain and Feed Association

Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

February 21, 2013

Arbitration Case Number 2555

Plaintiff: **Michael and Angela Schubert, Mineral Point, Wis.**

Defendant: **Cargill Inc., Wayzata, Minn.**

Statement of the Case

This arbitration case involved a dispute between Michael and Angela Schubert (Schuberts) and Cargill Inc. (Cargill) following execution of the *downside price protection* provision (through setting of a stop-loss price) in the *Cargill AgHorizons Focal Point Grain Contract Addendum* (FPA) that applied to various grain contracts between the parties.

On Sept. 20, 2010, the Schuberts and Cargill agreed to attach a FPA to each of seven corn contracts written between June 2009 and February 2010 for a total of 160,000 bushels (contract numbers DUBU-AH 223169, 225975, 226007, 226008, 226009, 226183 and 26218). Each of the contracts referenced the NGFA Trade Rules as the governing rules. In addition, each of the contracts and the FPAs were signed by both parties. Neither party disputed the existence or stated terms of these contracts or the FPAs.

Further, each FPA specifically provided the following terms: original transaction date, final pricing deadline, futures reference month, initial focal point price, applicable service fees, and the formula to determine the net adjustment amount to the contract once the final focal point price was established. Each FPA also contained Paragraph 1(C), which stated: *"Downside protection is required on all Focal Point contracts."* The parties acknowledged these terms and conditions contained in the FPA.

Since 2008, both the Schuberts and Cargill had further agreed to – and were utilizing – the *CargillAg Online Account Management System*, including utilizing electronic signatures to review, approve and execute contracts on-line.

Cargill stated during the conversation between its representative and Michael Schubert on the date that the FPAs were agreed upon – Sept. 20, 2010 – that Mr. Schubert verbally set the stop loss price at $4.75 per bushel to fulfill the downside price-protection provision. Cargill claimed that its representative was informed by Mr. Schubert that he was following what other farmers had done. Cargill asserted that in the ordinary course of business, the stop-loss price must be set prior to executing the contract.

The Schuberts denied that any conversation regarding setting a stop-loss price occurred. The Schuberts asserted that Cargill violated NGFA Grain Trade Rule 4 by changing the terms of the contract. The Schuberts particularly referred to the lack of reference to the term "stop loss" in the FPA.

As applicable to this case, NGFA Grain Trade Rule 4 [Alteration of Contract] states: *"The specifications of a contract cannot be altered or amended without the express consent of both the Buyer and the Seller. Any alteration mutually agreed upon between the Buyer and Seller must be immediately confirmed by both in writing."**

On Friday, Oct. 1, 2010, market conditions had resulted in automatic execution of the stop-loss price target by Cargill on all seven contracts. The executed addendum with the final *"Net Adjustment Amount"* then was posted to the Schuberts'

* Since the 2010 version, NGFA Grain Trade Rule 4 has been modified slightly, and now reads: *"The specifications of a contract cannot be altered or amended without the express consent of both the Buyer and Seller. Any alteration mutually agreed upon between Buyer and Seller must be confirmed by written communication by both parties."*

online account on Monday, Oct. 4, 2010. The net adjustment amount was derived by subtracting the *Initial Focal Point Price* of $5.18750 per bushel from the *Final Focal Point Price* of $4.75 resulting in a $0.4375 per bushel loss to each of the cash contracts.

The Schuberts began delivering grain under the first contract (no. DUBU-AH-225975) between Sept. 22 and Sept. 30, 2010, with a small final balance delivered on Oct. 7, 2010. Schubert delivered under the second contract (no. DUBU-AH-226183) from Oct. 7 through Nov. 30, 2010.

The settlements for both contracts reflected the same negative net price adjustment. The Schuberts said they were aware of the deduction, but attributed it to another cost related to the FPA. Service fees under the FPA were stated at 3-cents per bushel. The Schuberts also claimed that they had discussions with Cargill's representative between October 2010 through November 2010, during which no mention was made of the stop-loss pricing. The Schuberts further claimed that in November 2010, they instructed the Cargill representative to roll the FPAs when they rolled the remaining cash contracts from December 2010 futures to March 2011 with delivery dates spanning January 2011 to March 2011. Contract numbers DUBU-AH-226007, 226008 and 226128 were delivered and settled in January 2011.

The Schuberts stated that they first learned of the FPAs being closed on Feb. 4, 2011 from Mike's father, who also had entered into similar contracts as Schubert. On Feb. 9, 2011, Schubert sent a letter to Cargill disputing the deduction to their contracts.

As plaintiff, the Schuberts requested damages of $224,100 in the form of three claims. Claim I totaled $70,000, which was deducted from the Schuberts' settlement as a result of the execution of the stop loss. Claim II totaled $39,000 in damages from Cargill's alleged failure to price the FPA on the expiration date of the addendum. Claim III totaled $115,100, representing alleged lost-market opportunity between the expiration date of the initial FPA to the first shipment date of the cash contracts had the FPA been rolled.

The Decision

The arbitrators in this case determined that neither party disputed the existence and terms of the contracts and subsequent FPAs. In fact, delivery was made against the contracts. Based upon the documentation and testimony submitted by the parties, the arbitrators concluded that the Schuberts' past experience utilizing these contracts – including previous contracts with Cargill in which a stop loss was executed – demonstrated a working knowledge of the mechanics of the FPA and an understanding of the use of a stop-loss price to fulfill the downside protection provision.

The arbitrators determined that the use of a stop loss did not violate NGFA Grain Trade Rule 4 with respect to the original contract specifications because the pricing formula did not change. The downside price-protection provision was set forth in the FPA. Thus, it was unnecessary to amend the contract when setting a stop loss. Stop-loss target prices – as a standard industry practice – are communicated verbally between contracting parties and are set at the sole discretion of the seller. Only upon execution does written confirmation occur, which in this case was posted to the Schuberts' online account in a timely manner.

The Schuberts' claim that they were unaware of the execution of the stop-loss pricing until Feb. 4, 2010 was contradicted by the fact that: 1) the Schuberts delivered two contracts prior to that time realizing that the fees deducted from their settlement were in excess of the standard stated service fees and they did not dispute this issue with Cargill; 2) Mr. Schubert's father executed similar contracts on the same day, was priced out and signed hard copies of the contracts in October 2010, acknowledging a stop-loss pricing was executed; and 3) the Schuberts had used the online Cargill system since 2008 and, therefore, should have been familiar with how contracts and the FPAs were communicated between buyer and seller for review and execution. The Schuberts' claim that Cargill should have sent them a confirmation of the initial $4.75 per bushel stop-loss target order also was contradicted by the fact that they did not provide written documentation to Cargill of the pricing target order that they claimed was made by them after the addendum to the contract was closed.

The Schuberts' discussions with the representative from Cargill regarding the FPA's pricing after the addendum had been executed and closed did not change the fact that the stop loss was triggered and confirmed via the Schuberts' online account and subsequent settlements of two of their contracts. While unfortunate from a customer-service standpoint, it did not alter or negate the binding contract that the Schuberts had with Cargill.

The Schuberts' claim that they rolled the FPA to another month when they rolled the futures of their cash contracts was invalid because the FPA had a definitive time deadline. The seller would have had to close the contract and write a new FPA addendum to the cash contract. No documentation from either side was produced to suggest this had occurred. Nor does documentation exist to show that the cash contracts were rolled separately from the FPAs.

Therefore, the arbitrators determined that Cargill acted within the scope of the contracts, the FPAs, the NGFA Trade Rules and standard industry practices. The arbitrators noted that Cargill did not stand to gain economically by unilaterally establishing the Final Focus Point Price and closing the FPA when it was market conditions that triggered the stop-loss price of the downside price-protection provision. The Schuberts' acknowledgement of the provision and their previous history with this type of contract and FPA suggested that they were aware of the stop loss and had communicated their acceptance of that target price to the Cargill representative.

The Award

Therefore, the arbitrators denied the Schuberts' claim for damages from Cargill.

Submitted with the unanimous consent of the arbitrators, whose names and signatures appear below:

Randall K. Broady, *Chair*
Director of Grain Operations
Trupointe Cooperative Inc.
Botkins, Ohio

Terry Bline
Manager
Roanoke Farms Association
Roanoke, Ill.

Joel Eckelman
Risk Services Manager
West Plains Co.
Kansas City, Mo.