National Grain and Feed Association
Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3917
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: http://www.ngfa.org

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# Arbitration Case Number 1956

**Plaintiff: Greenfield-White Hall Cooperative, White Hall, Ill.**

**Defendant: Shelton Farms Inc., Shelton, Ill.**

## Statement of the Case

This case involved a claim for damages by Greenfield-White Hall Cooperative (Greenfield), the plaintiff, against Shelton Farms Inc., *aka* Shelton Farms (Shelton), the defendant, arising from cancellation of hedge-to-arrive (HTA) contracts for corn and soybeans. Greenfield sought damages for market differences between the contract prices and replacement cost at time of cancellation totaling $86,570.28, plus interest and attorneys fees.

The contracts involved in this dispute originally were entered into by Shelton with the White Hall Cooperative Elevator Co. and the Greenfield Farmers Co-op Grain Co. The two cooperatives merged their operations on June 1, 1997, and became known as Greenfield-White Hall Cooperative. In this arbitration case, the entities collectively are referred to as the buyer.

The following contracts were relevant to this dispute:

- Two soybean contracts[1] entered into during 1995, in which Shelton agreed to sell a total of 10,000 bushels to White Hall Cooperative. These contracts were canceled on March 9, 1998.
- Four corn contracts[2] entered into during 1995, in which Shelton agreed to sell a total of 30,000 bushels to White Hall Cooperative. These contracts were canceled on March 9, 1998.
- One unnumbered corn contract dated Oct. 12, 1995, in which Shelton agreed to sell 5,000 bushels to Greenfield Farmers Co-op Grain Co. This contract was canceled on July 19, 1996.

Each of the contracts was agreed to between March and October 1995 pursuant to telephone conversations between representatives of the buyer and Shelton. The contracts had various delivery points and delivery periods. The evidence showed that the buyer in each case prepared a purchase contract confirmation and sent it to Shelton. Each confirmation was signed by a representative of the buyer and, with one exception, all were signed by Richard Shelton.

The evidence also showed that, beginning in October 1995, each of the contracts' pricing and delivery periods were rolled numerous times, ultimately to March 1998. The buyer documented each "roll" on the face of its written copy of the contracts. But no written confirmations of the rolls were exchanged by the parties.

The buyer and Shelton did, however, exchange 14 letters concerning the existing contracts between August 1996 and May 4, 1998. The buyer, in the course of this correspondence, outlined the current status of the contracts' pricing compared to the current market, and asked for a delivery schedule from Shelton. Shelton responded twice with requests for payment for corn delivered on a separate contract, and pledged both times to deliver against the HTA contracts once paid. Shelton did not object to the status reports provided by the buyer. Nor did Shelton question the timing of the "rolls."

Richard Shelton, by letter dated Jan. 26, 1998, informed Greenfield that Shelton was "ready to begin delivery of the H.T.A. Contracts." However, Shelton also took the position that the contracts' pricing should be the original contract price, before any rolls took place. Specifically, it was stated that:

[1] *Contract numbers 4765 (dated March 15, 1995) and 4932 (dated June 7, 1995).*

[2] *Contract numbers 4797 (dated April 3, 1995), 4835 (dated April 28, 1995), 4930 (dated June 6, 1995) and 4931 (dated June 7, 1995).*

"Concerning the H.T.A. Contracts there is no agreement or terms in the contracts to roll or move the contract prices to another month. By moving the contracts to different months and thus lowering the price is in violation of the terms that were agreed to between Shelton Farms and White Hall Coop in the contracts."

The balance of the written correspondence between the two parties can be characterized as an attempt by each side to convince the other that its respective interpretation of the contracts was correct and legally binding. Greenfield asked for adequate assurance of performance from Shelton, and having not received it, canceled the outstanding HTA contracts on March 9, 1998. Greenfield communicated this to Shelton in a letter dated March 19, 1998.

## Majority Decision

This arbitration case was instituted by Greenfield's filing of an arbitration complaint dated June 6, 1998, which was received by the NGFA on June 9, 1998. Both parties[3] signed the ***National Grain and Feed Association Contract for Arbitration*** submitted to them and paid the required arbitration service fee. Both parties, therefore, agreed to abide by the NGFA Arbitration Rules and any final decisions rendered pursuant to NGFA arbitration of the matter.

Notwithstanding execution of the contract for arbitration, Shelton later argued that the unnumbered contract with Greenfield Farmers Co-op Grain Co. was not subject to arbitration because it "does not contain any arbitration clause."

It was undisputed that the confirmations sent by White Hall Cooperative Elevator Co. contained clear references to NGFA arbitration on the front page of the contract confirmations. The arbitrators concluded that all of the contracts were subject to NGFA arbitration because Shelton's president executed the contract for arbitration. Thus, even if the one contract failed to contain an arbitration clause, Shelton subsequently agreed to arbitrate this dispute by executing the NGFA arbitration contract. Section 3(a)(2) of the NGFA Arbitration Rules expressly recognizes that NGFA has jurisdiction over a dispute where both parties consent.

Next, the arbitrators concluded that it was necessary to analyze the six contracts written by White Hall Cooperative Elevator Co. separately from the one contract written by Greenfield Farmers Co-op Grain Co. This was because the evidence showed that the Greenfield Farmers Co-op Grain Co. contract was canceled on July 19, 1996. The cancellation of this contract occurred nearly 23 months prior to the filing[4] of the arbitration complaint (dated June 6, 1998) in this case. Therefore, the arbitrators found that Greenfield's claims on the Greenfield Farmers Co-op Grain Co. contract were substantively time-barred under the rules[5]. Specifically, Section 3(d) of the NGFA Arbitration Rules provides, in relevant part, that:

"The original complaint in connection with any disputed matter proposed for arbitration must be filed with the National Secretary within twelve (12) months after a claim arises, or within twelve (12) months after expiration date for performance of the contract or contracts involved."

The arbitrators concluded that the evidence showed that both Shelton and White Hall Cooperative Elevator Co. had previously entered into similar HTA contracts with each other. Nevertheless, the evidence also showed that the practices of both parties left much to be desired when it came to bookkeeping and contracting practices. The lack of written confirmations as to contract modifications certainly was a contributing factor leading to the current dispute.

Greenfield contended that while the NGFA Arbitration Rules applied to the parties' dispute, the NGFA Grain Trade Rules were not applicable. In contrast, Shelton claimed the NGFA Grain Trade Rules did apply to the parties' dispute. Here again, the contractual documents left something to be desired. The White Hall Cooperative Elevator Co. contracts contained the following provisions on the first page:

> "I. Seller agrees that all controversies between them under this contract be settled by arbitration rules and regulations of the National Grain and Feed Association pursuant to its grain arbitration rules. Buyer and Seller agree that judgement may be entered upon any arbitration award in any Court of competent jurisdiction.
>
> "J. Article 2 of the Uniform Commercial Code as adopted by the State of Illinois shall be deemed a part of this contract as if fully set out herein."

The arbitrators concluded that clause "I" undoubtedly created an enforceable arbitration clause. It was not as clear whether it made the NGFA Grain Trade Rules applicable. Indeed, Section 3(c)(3) of the NGFA Arbitration Rules con-

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[3] *Greenfield-White Hall Cooperative is a NGFA Active member. Shelton Farms Inc. is not a NGFA member.*

[4] *The arbitration complaint was dated June 6, 1998.*

[5] *The arbitrators made this distinction because Shelton did agree to proceed with arbitration and was subject to whatever decision was reached. The arbitrators found that Shelton's agreement to arbitrate did not preclude it from later raising a defense barring recovery by either party that was based on the applicable rules.*

tains "rules of contract interpretation" making it clear that a provision referencing the NGFA Arbitration Rules can stand on its own apart from the NGFA Trade Rules:

*"A contractual provision referencing these rules, without also referencing the NGFA Trade Rules, shall be presumed to intend NGFA Arbitration without reliance on the NGFA Trade Rules."*

On the other hand, the arbitrators concluded that both the NGFA Trade Rules and the Uniform Commercial Code could apply to a transaction where the two sets of rules are not inconsistent. Therefore, the arbitrators concluded that the NGFA Grain Trade Rules applied to these transactions given the confusing wording of the grain buyer's contracts. Alternatively, the NGFA Grain Trade Rules reflect trade custom and were appropriate to use in analyzing the transaction, given that the parties' contractual documents and practices left gaps to be filled.

Importantly, NGFA Grain Trade Rule 41 provides[6] as follows:

*"**Rule 41. Alteration of Contract**: The specifications of a contract cannot be altered or amended without the expressed consent of both the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by both in writing."*

One arbitrator concluded that Greenfield, as a NGFA member, had the duty to perform under the Grain Trade Rules and issue a written confirmation each time the contracts were rolled. Failure to have done so would result in rendering the contracts unenforceable and void.

The majority concluded that the evidence showed that there was no material dispute on the rolling of the contracts for a period of 15 months. This fact, led the majority of the arbitrators to conclude that the parties "mutually agreed" to the contract alterations and that both parties were at fault for not complying with the other requirements of Rule 41.

During the period in question, there were numerous rolls and communications (even if not formally referenced as confirmations) between the parties as to the changes made to the pricing and delivery periods resulting from the "rolls." Thus, the majority concluded that the parties' actual course of conduct provided sufficient evidence to corroborate that the amendments or alterations were actually agreed to by parties. The parties' conduct obviously fell far short of recommended practice regarding contract formation and performance.

The majority also concluded that Greenfield acted properly when Shelton repudiated the contracts and that the contracts were canceled in substantial compliance with NGFA Grain Trade Rule 10,[7] which provided Greenfield with three alternative remedies when a seller failed to perform. Greenfield sent a letter dated Feb. 25, 1998, to Shelton demanding "within 7 days of receipt of this letter, adequate assurances that Shelton Farms Inc. will perform its obligations....In the event such assurances are not forthcoming, Greenfield-White Hall Cooperative will consider Shelton Farms Inc. has repudiated said contracts, and will take the appropriate action." Cancellation of the defaulted portion was one of the alternative remedies available to Greenfield under the rules.

Shelton did not dispute the cancellation values used by Greenfield on March 9, 1998, which are presented in the following chart.

| Contract Number | Commodity | Bushels | Contract | Cancellation Price | Difference (Price) | Damages |
|---|---|---|---|---|---|---|
| 4930 | Corn | 5,000 | $1.23 | $2.70 | $1.47 | $ 7,350.00 |
| 4931 | Corn | 5,000 | $1.19 | $2.70 | $1.51 | $ 7,550.00 |
| 4797 | Corn | 10,000 | $1.06 | $2.70 | $1.64 | $16,400.00 |
| 4835 | Corn | 10,000 | $1.05 | $2.70 | $1.65 | $16,500.00 |
| 4765 | Soybeans | 5,000 | $3.5275 | $6.62 | $3.0925 | $15,462.50 |
| 4932 | Soybeans | 5,000 | $3.5175 | $6.62 | $3.1025 | $15,512.50 |
| | | | | | **Total** | **$78,775.00** |

## The Award

Therefore, it was ordered that:

- Greenfield-White Hall Cooperative is awarded a judgment of $78,775 against Shelton Farms, Inc.;
- Compound interest on the judgment shall accrue at the rate of 8 percent per annum from April 9, 1998, until all sums are paid in full, plus compound interest at the rate of 8 percent per annum from April 9, 1998, until all sums are paid in full;
- Greenfield-White Hall Cooperative's claims regarding the unnumbered contract between Greenfield Farmers Co-op Grain Co. and Shelton Farms, Inc. are denied;

[6] *This rule appears as NGFA Grain Trade Rule 4 in the current rules.*

[7] *The provisions of the rule regarding remedies related to a failure to perform now are embodied in NGFA Grain Trade Rule 28.*

- All other claims arising from the contracts at issue are denied; and
- Each party is responsible for its respective attorney fees and costs.

This majority opinion is submitted with the consent and approval of the arbitrators, whose names are listed below:

**Ron Finck**, *Chairman*
Executive Vice President, Grain
West Central Cooperative
Ralston, Iowa

**Roger Krueger**
Director, Grain Marketing
South Dakota Wheat Growers Association
Aberdeen, S. D.

## Minority Opinion

This arbitrator was in substantial agreement with the majority's "Statement of the Case." This arbitrator also agreed with the majority's conclusion that Greenfield's claims were time-barred on the unnumbered contract entered into between Shelton and Greenfield Farmers Co-op Grain Co. Indeed, this arbitrator also agreed with many of the points made by the majority regarding the sloppy business practices attributable to both parties, which obviously had a lot to do with why the arbitrators were left with the difficult job of deciding this case.

The difficulty of reconciling the various allegations by the parties was evident by a review of the contract confirmations. For example, contract number 4797 showed that an oral agreement was entered into by the parties on April 3, 1995. Representatives of both parties signed the confirmation prepared and sent out by the buyer. The confirmation set forth a specific quantity, a specific commodity, destination weights to govern, destination inspection to govern, and market scale of discounts to govern. A delivery period of "SEP-OCT-NOV" was included, but without mentioning a year. Certainly, trade practice would presume the year to be 1995. The document under its "price/bushel" section contained a reference to $2.64, less $0.02 commission, resulting in a price of $2.62. The confirmation also contained a clause providing for NGFA arbitration of disputes.

The confirmation did not make any reference to a HTA pricing situation. Nor did the contract set forth any mutually agreed method to delay delivery or adjust the value, other than under the "Remarks" section where it provided "basis and destination to be set prior to delivery."

NGFA Grain Trade Rule 41 was quite specific[8] in stating trade custom in situations involving the amendment of a contract. "Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by both in writing." While the evidence showed that Greenfield noted amendments or alterations on the face of each confirmation in its possession, there was no evidence submitted to show that Greenfield "immediately confirmed" these changes by sending out a notice to Shelton. If the contract amendments were not enforceable, Shelton should have made delivery by the end of November 1995. Absent a written amendment to the parties' original agreement of April 3, 1995, Greenfield should have commenced an arbitration case on contract number 4797 within 12 months of that date (*i.e.*, prior to Dec. 1, 1996).

This arbitrator's analysis of the other outstanding contracts resulted in similar conclusions. The evidence presented failed to demonstrate that Greenfield presented Shelton with any written confirmations of price or delivery date modifications on the contracts. There was no dispute that the contracts initially were entered into and confirmed in writing. It also was undisputed that the delivery periods on the contracts ranged from September 1995 through March 1996. Absent some evidence of written confirmation of changes to the contracts, the amendments should be considered unenforceable per the provisions of NGFA Grain Trade Rule 41. Greenfield should have commenced arbitration within 12 months after the expiration dates of the expired contracts. Thus, the latest date for filing an arbitration request would have been prior to April 1997. Since this case was not filed until June 1998, this arbitrator considered all of Greenfield's claims to be time-barred under the NGFA Arbitration Rules.

Finally, it is the conclusion of this arbitrator that Greenfield-White Hall Cooperative, as a member of the NGFA, had a duty to perform according to the Grain Trade Rules of the Association. Greenfield-White Hall should be held accountable to the same high standards of ethics and accuracy as any other member firm. The admitted "sloppy" recordkeeping and the concomitant failure to abide by NGFA Trade Rule 41 are serious and unacceptable.

For these reasons, this arbitrator would deny in their entirety the claims asserted by Greenfield-White Hall Cooperative against Shelton Farms Inc.

Submitted by the arbitrator whose name is listed below:

**William L. Settlemyre**
President
Settlemyre Seed Co.
Clarksville, Ohio

[8] *That rule is now NGFA Grain Trade Rule 4. See* ***NGFA Trade Rules and Arbitration Rules Booklet*** *(2000) (new rules became effective on April 30, 2000).*