



# National Grain and Feed Association Arbitration Decision

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December 2, 2020

## CASE NUMBER 2838

**PLAINTIFF: AGRIDYNE, LLC  
SPRINGFIELD, IL**

**DEFENDANT: CARGILL, INC.  
DAYTON, OH**

### STATEMENT OF THE CASE

This case concerns purchase confirmation contract number 671585 between the buyer, Agridyne, LLC, and the seller, Cargill, Inc., for the purchase of 149 railcars of off-spec corn syrup at \$3.00 per ton “F.O.B.: Dayton, OH”.

Agridyne claims contract 671585 was valid, and Cargill is in breach because it only shipped 12 of the 149 railcars under the contract. Cargill argues contract 671585 was never confirmed or agreed to and, therefore, was invalid, and the 12 railcars that did ship were under a separate contract that was agreed upon by both parties.

Cargill and Agridyne began discussions in February 2017 for the sale of off-spec corn syrup produced at Cargill’s mill in Dayton, OH. On June 12, 2017, Agridyne sent by email to Cargill a bid for 29 “current” railcars and 149 “projection” railcars for shipment in June-Jan 2018. On June 15, Cargill sent by email to Agridyne a “customer confirmation” bid sheet with the terms “Price: \$3/ton FOB Dayton” and “Price Expiration Date: 6/30/17” for Agridyne to complete. Also, on June 15, Agridyne created purchase contract number 671585 (which was not sent by email to Cargill until June 23, 2017). On June 16, Agridyne sent by email to Cargill the completed “customer confirmation” for an estimated 149 railcars with the terms “Price: \$3/ton FOB Dayton” and “Price Expiration Date: 2/28/2018.”

Upon receipt of the contract confirmation from Agridyne by Cargill for the 149 cars on June 23, Cargill states its representative telephoned Agridyne to explain that no such contract had been agreed to and that Cargill was only interested in beginning with a smaller quantity of railcars for shipment within a closer time frame. In subsequent calls, according to Cargill, Agridyne agreed to purchase 12 cars for July 2017 shipment under a separate contract. Agridyne contends these 12 cars were part of the 149-car contract.

During June and July, Agridyne inquired with Cargill about possible additional shipments of corn syrup and other products, including dextrose.

Agridyne contends contract 671585 was valid because Cargill failed to notify Agridyne of any disagreements with the contract and Cargill failed to formally reject it. Agridyne is seeking damages of \$2,013,900, based upon unshipped tonnage of 13,700 at \$147.00 per ton (\$150.00 per-ton market price

less the \$3.00 contract price). Agridyne calculated the price of the unshipped corn syrup based upon an email it received from Cargill stating “For the corn syrup, I can’t get the commercial manager to agree to release versus reprocess. His number is well north of \$150/ton FOB”. Agridyne claims this email was an indication of the market price of the corn syrup Cargill refused to deliver.

Cargill claims contract 671585 was invalid because it was never confirmed or agreed, and Cargill argues the basis upon which Agridyne calculates its damages is unfounded. Cargill is requesting an award of the costs associated with defending against this claim.

### **THE DECISION**

The arbitrators note that communication displayed by both parties was poor and played a part in this dispute. Based upon the evidence and documents provided by the parties, the arbitrators conclude that contract 671585 was neither confirmed or agreed to and, therefore, is invalid.

The arbitrators’ decision is unanimous.

The arbitrators declined any award of damages to Agridyne or defense costs to Cargill.

### **THE AWARD**

No damages are awarded in this case.

Decided: July 18, 2019

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

**Joe Bourne, *Chair***  
Trader  
CSC Gold  
Overland Park, KS

**Robert Bond**  
Senior Grain Merchandiser  
Agrex, Inc  
Franklin, TN

**Shayne Murphy**  
Grain Merchandiser  
Parrish & Heimbecker Limited  
Winnipeg, Manitoba, Canada



December 2, 2020

## APPEAL CASE NUMBER 2838

**APPELLANT/PLAINTIFF: AGRIDYNE, LLC**

**APPELLEE/DEFENDANT: CARGILL, INC.**

### DECISION OF THE APPEALS COMMITTEE

The plaintiff in the underlying case, Agridyne, LLC (“Agridyne”) filed an appeal of the original arbitration committee’s decision against the defendant, Cargill, Inc (“Cargill”). After review of the facts, arguments, and documents presented in this case, the appeals committee reached the following conclusions:

As noted by the original arbitration committee, the communication between Agridyne and Cargill as displayed by both parties in this case was poor and played a significant part in this dispute. Negotiations between the parties were conducted by individuals who did not have the necessary final trading authority, which further added to the confusion regarding the quantity of product available.

Agridyne sought in its appeal to introduce for the first time the existence of a pre-existing oral agreement between the parties. This is contrary to NGFA Arbitration Rule 7(D), which provides that arguments on appeal shall be confined to the facts contained in the record of the underlying case, and any new evidence submitted in violation of this rule may be removed from the argument or disregarded by the appeals committee. Therefore, any evidence of an oral agreement should have been included in the original case, and because it was not, this appeals committee is precluded from considering it now.

From the evidence provided in the case to the original arbitration committee, there was no *meeting of the minds* to consummate a trade between Agridyne and Cargill for the 149 cars of off-spec corn syrup. On June 15, 2017, Cargill sent to Agridyne a “Customer Confirmation” to verify that Agridyne was a current customer, and if it was not, to start Agridyne’s credit approval process. The document did not state any quantities or descriptions of products for any trade. Agridyne returned this document to Cargill on June 16, 2017, after making extensive alterations. This indicates to the appeals committee that the parties were still in discussions concerning the details of the trade and had not yet reached any agreement.

In contradiction, Agridyne asserts it executed Purchase Contract 671585 on June 15, 2017, and Agridyne claims that the documents it exchanged with Cargill are sufficient to indicate that a trade existed. Agridyne refers to the “Terms and Conditions” in the contract confirmation provide, which state: *“In case of any inconsistency between the Buyer’s and Seller’s contract, Buyers contract governs unless the Seller advises within 5 days of the contract date.”* Agridyne argued that Cargill’s failure to

object to the Agridyne's confirmation of contract 671585 is acceptance of the trade by Cargill. However, the appeals committee concludes that this argument does not prevail because the evidence in the case indicates that no trade existed between the parties in the first place.

<b>AWARD</b>
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Therefore, the appeals committee affirms the decision of the original arbitration committee and denies any award of damages to Agridyne LLC. Further, no legal defense costs are awarded to Cargill, Inc.

Decided: October 21, 2020

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

**Sharon Clark, *Chair***  
Sr. VP, Transportation &  
Regulatory Affairs  
Perdue AgriBusiness LLC  
Salisbury, MD

**Jean Bratton**  
CEO  
Centerra Co-op  
Ashland, OH

**Sean Broderick**  
DDGS Merchandising Manager  
CHS Inc.  
Inver Grove Heights, MN

**Jay Mathews**  
Grain Marketing Manager  
Midwest Grain, LLC  
Bloomington, IL

**Ed Milbank**  
President  
Milbank Mills  
Chillicothe, MO