

National Grain and Feed Association Arbitration Decision

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1400 Crystal Drive, Suite 260
Arlington, VA 22202

P: (202) 289-0873
F: (202) 289-5388

December 9, 2024

CASE NUMBER 2872

**PLAINTIFF: ILLINOIS COMMODITIES CORPORATION
CHAMPAIGN, IL**

**DEFENDANT: PREMIER COOPERATIVE, INC.
CHAMPAIGN, IL**

STATEMENT OF THE CASE

This arbitration is between Illinois Commodities Corporation (ICC), a futures commodity broker, and Premier Cooperative, Inc. (Premier), a cooperative originating corn and beans for its elevators. ICC and Premier have a dispute over a Grain Origination Consulting Agreement (Agreement). On July 1, 2018, both parties signed the 3.5-year Agreement whereby ICC was to provide various services so Premier's grain origination program could offer its customers very complex and sophisticated grain contracts. Remuneration to ICC was based on a per-bushel commission schedule with Premier guaranteeing a minimum of \$80,000 per year.

During the first year of the Agreement there were not many grain contracts covered by the Agreement. Premier paid the minimum guaranteed amount this first year. After more than a year into the agreement, Premier informed ICC it was not clear what services it was receiving to warrant the minimum payment. Premier requested the Agreement be suspended. ICC refused the request and did not engage in discussions to provide clarity for Premier regarding the nature of ICC's services. Premier notified ICC that it was going to stop paying the minimum amounts, and Premier ultimately declared ICC in default. ICC denied it was in default claiming it was performing the duties as required under the Agreement.

In this arbitration, ICC claims it fulfilled the terms of the Agreement and is owed the entire minimum amounts for the 3.5-year term. ICC requests an award of \$200,000, representing the balance of the unpaid portion under the Agreement. Premier counter claims that ICC never delivered the services promised under the Agreement and, consequently, ICC is in default. Premier requests ICC's claim be denied and the \$80,000 already paid to ICC be returned to Premier.

THE DECISION:

The Arbitration Committee determined both ICC and Premier entered into the Agreement in good faith. Premier sought to offer more sophisticated grain contracts to its customers but did not have the capabilities. ICC had a program to enable Premier to offer such contracts to its customers. The parties then entered into the formal Agreement whereby ICC would deliver various detailed services, including advice on development, implementation and management of special grain origination programs using

“Complex Managed Contracts” (i.e., “Daily Avg. Seasonal with Minimum Floor” and “Sell It or Store It with Firm Offer” contracts). Related to servicing for these Complex Managed Contracts, ICC agreed to:

- provide “branding” whereby producers would appoint ICC as a third-party advisor
- develop contract templates and pricing quotes
- manage and provide recordkeeping
- provide training for Premier
- determine pricing parameters

While the deliverables that ICC was to provide are not more specifically stated in the Agreement, the terms of the Agreement along with the evident mutual understanding of both parties demonstrates that they intended to establish a formally structured program with organized execution by ICC. Based on the evidence presented by the parties, the Arbitration Committee concluded the services delivered by ICC were informal and without much structure or organization.

By way of illustration: the Agreement states ICC will provide training. The Arbitration Committee anticipates this would have involved some sort of structured training that would give Premier skills to offer the Complex Managed Contracts to its customers. ICC provided evidence related to training of one meeting with producers and a stated willingness to train Premier. For additional evidence of consulting and training services provided, ICC presents about eight emails sent during the first year. The content of those emails ranged from market information with suggested strategies to possible meetings to occur in the future. While the content was good and had potential value, the emails display just the sort of activity one would expect from a futures broker. They do not exhibit a formal program for guiding Premier’s origination program toward Complex Managed Contracts capabilities.

As another example: the Agreement states ICC will develop contract templates. The Arbitration Committee would have consequently expected a formal process of ICC working with Premier once some training had occurred. ICC’s evidence that it provided services related to developing contracts was simply that it provided Premier with login credentials for ICC’s website that contained Complex Managed Contracts.

Also, the Arbitration Committee was concerned by the lack of formality and clarity related to ICC’s assistance to Premier with real time pricing. Premier argued it was unable to obtain real time pricing from ICC without new software. ICC responded that although Premier’s existing software would not support the Complex Managed Contracts, new software was not part of the Agreement or the parties’ expectations.

In the end, the Agreement contained specific objectives, but once execution started under the Agreement the parties experienced actual delivery and performance to be an issue. The result was that after a year, Premier informed ICC that Premier was not getting the services anticipated under the Agreement.

The Arbitration Committee determined ICC and Premier engaged in good faith. In that spirit they worked together for a year before the clarity of execution under the Agreement was challenged. The Arbitration Committee concludes the challenge of the Agreement after one year was legitimate: the specific deliverables were not clear enough. The NGFA Trade Rules describe how disputes, performance and potential defaults of grain contracts are to be resolved (e.g., NGFA Grain Trade Rule 28). These rules do not specifically apply here. However, there exists in spirit obligations for both parties to communicate and follow through under the Agreement. Premier notified ICC of performance issues when they requested suspension of the Agreement. At that point there was not sufficient

communication and follow through under the Agreement. The parties could have further clarified the Agreement to mutual satisfaction or otherwise mutually resolved the dispute.

The Arbitration Committee makes no award to either party.

THE AWARD

No damages are awarded in this case.

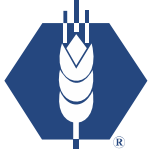
Decided: May 12, 2022

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

Ben Baer, *Chair*
President
Livestock Nutrition Center
Memphis, TN

Ryan Warner
Rail Trading Group Manager
CGB Enterprises Inc.
Covington, LA

Tom Lynch
Commodity Merchandiser
Ingredion Canada Corporation
Cardinal, Ontario, Canada



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