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Arbitration Decision
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July 16, 2024

CASE NUMBER 2928

PLAINTIFF: **ARCHER-DANIELS-MIDLAND COMPANY**
CLINTON, IA

DEFENDANT: **JERED AND JEFF NESEMEYER**
FREEPORT, IL

STATEMENT OF THE CASE

This case involves multiple contracts for the purchase of corn by Archer-Daniels-Midland Company (ADM) from Jered and Jeff Nesemeyer ("Nesemeyers"). The original purchase contracts, with a contract date of September 10, 2020, are commonly referred to as *Accumulator* contracts (or how they are referred to by ADM as "1 x 2 Contracts," whereby if a specific futures price is reached the seller is required to deliver double the base amount agreed upon.

The contracts in dispute in this case were ADM Contract Numbers 0942604, 0942605, and 0942609.

ADM claims that the Double Up futures prices were reached, thus the Nesemeyers owed double the original bushels. ADM claims the trigger date was November 26, 2021, despite the contract showing a futures month of September 20,2020. The Nesemeyers, following the written contract, failed to provide sufficient assurances to ADM that they would deliver the disputed Double Up bushels, which led ADM to cancel the contracts at market on May 13, 2021. Neither party disputes the initial bushels or price terms in the contracts. Modifications to the original contracts took place on October 22, 2020, and at some date in December 2020. On January 13, 2021, the Nesmeyers brought up the September '20 Futures reference month. ADM contends multiple calls took place in January and February discussing these contracts. After February 10, 2021, the Nesemeyers communicated via attorney with ADM. ADM cancelled the contracts at market on May 13, 2021, after not receiving adequate assurances from the Nesemeyers, and ADM sent invoices to Nesemeyers for the market differential on May 17, 2021.

The main arguments by ADM are as follows:

a. A series of contracts written by ADM contained a scriveners error regarding a bushel double up of the original contracted bushel amount. The SEP '20 Futures reference month that would determine the bushel double was a scrivener's error and should have been DEC'21.
b. ADM wrote the contracts and sent them to Nesemeyers for signature.
c. ADM's grain merchandiser had conversations with Nesemeyers about the double up bushels, and through those conversations, Nesemeyers alluded to knowing the double up bushels were based off the DEC'21 futures reference month.

d. ADM's origination manager began discussing with Nesemeyers after it appeared to ADM's grain merchandiser that Nesemeyers may default based upon conversations regarding the double up portion of the contracts in question.
e. In ADM's grain merchandiser's affidavit (page 9, item 41), he states that it is standard industry practice to use a futures reference month that is the month of delivery (or nearest following month for which there is a futures contract) to hedge and price grain contracts.
f. This point is also made by ADM on page 30 of its first argument that "it would make no economic sense to use an old-crop Futures Reference month to hedge a new crop delivery obligation."

The main Arguments by the Nesemeyers are as follows:

a. Nesemeyers did in fact enter into three separate contracts for 2021 crop delivery corn with ADM in September 2020. The initial bushel amount of those contracts totaled 80,000 bushels. They also knew there was a potential double where they may be required to deliver an additional 80,000 bushels if certain market conditions were met. Those conditions revolved around a Futures Reference month, Futures Reference month Price, and pricing date. However, the futures reference month on the contract drafted by ADM, signed by ADM's grain merchandiser, and signed by Nesemeyers – listed SEP'20 as the correct Futures reference month. Also, $4.00 was the correct Futures reference month Price for the double up, and November 26, 2021, was the correct double up date.
b. When ADM attempted to send to Nesemeyers amended copies in February 2021 of those original contracts with DEC'21 as the futures reference month – Nesemeyers responded in writing within 10 days as required by NGFA Trade Rules that they did not agree to the amended contract and wished to leave the contract as originally signed.
c. Nesemeyer also argued that the contracts were "missing key terms and is thus incomplete and not enforceable"

THE DECISION

The arbitrators concluded as follows:

There is no objection by either party with regard to the initial 80,000 bushels of obligated delivery for corn for the 2021 crop. When ADM sent the amended contracts to Nesemeyers, Nesemeyers rejected the amendments. Nesemeyers did so within the parameters of NGFA Grain Trade Rule 4 regarding the amending of contracts and notification of errors regarding those contracts.

The arbitrators determined ADM was correct in cancelling the contracts but did not execute the cancellations according to the terms of the signed contracts.

ADM's argument that the futures reference month was a simple scriveners error is contradicted by its own evidence submitted in this case (contract 944600)

- Basis Contract 944600 01, signed by Nesemeyer on December 8, 2020, for corn for delivery December 8 – December 31, 2020, lists a futures reference month of CBOT Dec-21 and also a date of February 25, 2021, by which Nesemeyer must establish the futures price or spread to another month.
- This contract was included as an example of contracts outside of this dispute that were executed between ADM and Nesemeyers. This contract seems to contradict ADM's own arguments that "it is standard industry practice to use a futures reference month that is the month of delivery (or

nearest following month for which there is a futures contract) to hedge and price grain contracts," as this contract relies upon an old crop delivery obligation with a new crop futures month, and nearby trigger date.

- It appears that it was common practice for ADM's grain merchandiser to mix and match futures months and delivery months (and crop years).

Therefore, the committee unanimously finds as follows:

ADM's calculations to cancel out of the initial 80,000 bushels of corn are correct. However, due to the fact that Nesemeyers rejected the amended contracts pursuant to the NGFA Trade rules, the committee determined to use the signed contracts as valuation for the cancellation.

For the initial bushel commitment: The arbitrators award $104,000 to ADM.

Contract No.	Bushels	Original Futures Reference Price	Pricing Amendment	Amended Futures Reference Price [c] + [d]	Closing Futures Price on May 14, 2021	Damages /Bushel [f] – [e]	Total Damages [g] x [b]
[a]	[b]	[c]	[d]	[e]	[f]	[g]	[h]
604	20,000	4.0000	0.1225	4.125	5.4275	1.3050	26,100
605	20,000	4.0000	0.1225	4.125	5.4275	1.3050	65,250
609	10,000	4.0000	0.1225	4.125	5.4275	1.3050	13,050
Total:	**80,000**						**104,400**

For Double up bushels: The Price for Sep'20 CBOT corn futures closed off the board below $4.00. The applicable "Final Trade Date" was September 14, 2020, and final price for SEP'20 Futures was $3.57 ½. Therefore, no damages for double up bushel commitments are awarded.

THE AWARD

Archer-Daniels-Midland Company is awarded $104,000 in damages from Jered and Jeff Nesemeyer for the initial bushel commitment. No damages for attorney fees or interest are awarded.

Decided: May 2, 2024

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

Matthew Fitzthum, *Chair*
Manager of Co-Product Trading
CHS Inc.
Inver Grove Heights, MN

Lee Anderson
Manager
Ririe Grain and Feed Cooperative
Ririe, ID

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