National Grain and Feed Association
Arbitration Decision
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December 9, 2024

CASE NUMBER 2954

PLAINTIFF: **INDIGO AG, INC. AND ITS WHOLLY-OWNED SUBSIDIARY, INDIGO MARKETPLACE, LLC**
MEMPHIS, TN

DEFENDANTS: **TOWNSEND FARMS, INC. AND MIKE DONALDSON**
NEBO, KY

STATEMENT OF THE CASE

The plaintiffs, Indigo Ag, Inc., and its wholly-owned subsidiary, Indigo Marketplace, LLC (collectively, "Indigo"), and defendants, Townsend Farms, Inc. and Mike Donaldson (collectively, "Townsend Farms") entered into contract numbers AC3238B6121, AC802930161, ACAAEED3A71 and AC6C556B0EE, which were governed by a Marketplace Seller Agreement (MSA).

Indigo asserts that Townsend Farms defaulted on delivery of 84,394.18 bushels (bu.) of contract corn as of July 22, 2021, and Indigo claims $200,748.39 plus interest in contract cancellation damages.

Townsend Farms asserts that Indigo breached the terms of the contracts and NGFA Grain Trade Rule 28(D). Townsend Farms claims the grain was available for pick up by Indigo, and Townsend Farms does not owe Indigo any compensation. Townsend Farms requests $69,734.96, which was applied as an offset for damages claimed by Indigo, plus interest and attorney fees.

The arbitrators noted the sequence of events leading up to this dispute were as follows:
- <u>Oct. 16, 2019</u>: Townsend Farms acknowledges the MSA with Indigo.
- <u>Jan. 27, 2020</u>: Townsend Farms and Indigo enter into four separate basis contracts for 30,000 bu. of corn each through the Indigo Marketplace platform. The four contracts are listed above. No paper confirmations are sent. Confirmations are emailed to the defendant.
- <u>Sept. 24, 2020</u>: Futures were set on all four contracts using $3.635/bu. CZ2020. On the same day, confirmations were again emailed to the defendant.
- <u>Dec. 21, 2020, through July 2, 2021</u>: 25,605.82 net bushels were delivered against the open contracts.
- <u>Jan. 3, 2021</u>: Indigo's grain marketing specialist emailed Donaldson to roll 106,000 bu. to March Delivery, as the facility accepting delivery would be down for maintenance. (Donaldson acknowledges this communication in his declaration provided in this case, but no replies to the original email were provided by either party).
- <u>May 19, 2021</u>: Indigo's grain marketing specialist emailed Donaldson to extend the contracts to June 30, 2021. (The arbitrators were not provided with a response from Donaldson).

- June 14, 2021: Indigo's grain marketing specialist again emailed Donaldson to extend the contracts to July 15, 2021. With an ultimatum that the contract needs to be delivered by that date. (The arbitrators were not provided with a response from Donaldson).
- July 13, 2021: Indigo attempts to extend the contracts and adjust transportation costs. Townsend does not confirm or acknowledge the change.
- July 16, 2021: Indigo's grain marketing specialist emailed Donaldson stating that Indigo was working on costs and damages claiming Townsend Farms was in default. That same day Donaldson text messaged Indigo's grain marketing specialist that he did not agree to amending the contract from "FOB" to "Delivered," and that the contract was still open for delivery. This was the first definitive disagreement about contract term alterations.
- July 22, 2021: Indigo sent to Townsend a demand letter and declares Townsend is in default of its contract obligations.
- July 26, 2021: Indigo's counsel emailed Donaldson in reply to Donaldson's indications he considered the contracts were still open, valid, and waiting for Indigo to pick up.

THE DECISION:

The arbitration committee has reviewed the contracts and claims. It is clear to the committee that both parties during different time periods employed sub-par procedures to execute the contracts. However, both parties appear to continually agree on new timelines for execution to occur in the future - the last of which occurred on June 14, 2021 – when an extension was made until July 15, 2021, for the contract to be executed.

After considering all documents provided and arguments asserted by both the defendants and plaintiffs, the committee has concluded that for the time period of June 14, 2021, to July 15, 2021, Indigo did not provide adequate evidence of making a bona fide effort to execute its obligation and uphold its end of the contract.

For the time period of June 14, 2021, to July 15, 2021, it was Indigo's obligation to execute upon the contract and provide documentation to the committee that every effort was made to execute and perform under the contract. However, the committee was not provided with such documentation. The committee relies upon NGFA Grain Trade Rule 28 (B) [Buyer's Non- Performance] as the rule that applies in this case.

The committee is unanimous in its decision and award in favor of Townsend for $69,734.96 plus interest, for corn that was previously picked up and held by Indigo as an offset. No attorneys' fees are awarded.

THE AWARD

The arbitrators awarded $69,734.96 in damages to Townsend Farms, Inc. and Mike Donaldson from Indigo Ag, Inc. and its wholly owned subsidiary, Indigo Marketplace, LLC. Interest shall accrue on the award at the rate of 3.25 percent, pursuant to NGFA Arbitration Rule 6(F) from August 11, 2021 (the date the $69,734.96 should have been paid), until the award is paid in full.

Decided: August 23, 2024

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

Chad Rosebrook, *Chair*
Vice President of Grain
Legacy Farmers Cooperative
Findlay, OH

Dan Mostad
General Manager
Berthold Farmers Elevator
Berthold, ND

Jeremy Sculthorpe
Risk Manager
ADM Ag Services & Oilseeds
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