



National Grain and Feed Association Arbitration Decision

www.ngfa.org | www.ngfa.org/decisions

1400 Crystal Drive, Suite 260
Arlington, VA 22202

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

December 9, 2024

CASE NUMBER 3125

**PLAINTIFF: THE ANDERSONS, INC.
SIDNEY, IL**

**DEFENDANTS: LITTEKEN FARMS, INC.
CHARLESTON, IL**

STATEMENT OF THE CASE

The plaintiff, The Andersons, Inc. (The Andersons), and the defendant, Litteken Farms, Inc. (Litteken Farms), entered into four contracts dated December 7, 2020:

Contract #1100259281 for 20,000 bu. corn delivered September 1 through November 30, 2022

Contract #1100259282 for 20,000 bu. corn delivered December 1 through December 31, 2022

Contract #1100259283 for 30,000 bu. corn delivered January 1 through January 31, 2023

Contract #1100259284 for 30,000 bu. corn delivered December 1 through December 31, 2022

Contracts 281, 282, and 283 were accompanied by a two-year Pro Pricing Addendum dated December 8, 2020, and contract 284 was accompanied by a Velocity Pro Pricing Addendum dated December 8, 2020. All contracts were signed by both parties and state that NGFA Rules apply to any disagreements or controversies and NGFA Arbitration is to handle such discrepancies.

For the contracts in dispute in this case, Litteken Farms agreed to deliver a total of 100,000 bushels of 2022 crop corn. The pricing for three of the four contracts was to be determined by the Pro Pricing two-year program, and pricing for the fourth contract (#284) was to be determined by the Velocity Pro two-year pricing program.

Pricing periods for these contracts were to be set during the following time frames:

Pro Pricing two-year program = December 11, 2020, through September 21, 2022

Velocity Pro two-year program = December 21, 2020, through October 12, 2022

Final pricing of contracts 281, 282, and 283 was \$4.025 Dec 22 CBOT futures and of contract 284 was \$5.88 Dec 22 CBOT futures.

In December of 2021, Michael Litteken, president of Litteken Farms, informed The Andersons that he planned to retire in July 2022.

In December of 2021, The Andersons sought assurances that Litteken Farms would fulfill the contracts and offered various options to Litteken Farms:

Option 1 = Establish a basis contract on Litteken Farms 80,000 bu. of unsold 2021 crop corn

Option 2 = Transfer the contracts to the new future tenants of the Litteken Farms acreage

Option 3 = Cancel the contracts and invoice Litteken Farms for the difference in pricing

As of March 18, 2022, Litteken Farms had still not informed The Andersons of its decision.

In August of 2022, The Andersons – having still not heard of Litteken Farms’ decision – informed Litteken Farms it had until August 31, 2022, to decide on the three options stated above. This deadline was extended to September 6, 2022, and subsequently a final extension of September 16, 2022, was provided.

The Andersons never received a decision from Litteken Farms. The Andersons cancelled contracts 281, 282, and 283 on September 22, 2022, and cancelled contract 284 on October 13, 2022, when final pricing was set.

Contracts 281, 282, and 283 had a final Futures price of \$4.025 CBOT Dec 22 futures and on the close that day Dec futures were \$6.8825.

Contract 284 cancelled October 13, 2022, had final pricing of \$5.88 CBOT Dec 22 futures and on the close that day Dec futures were \$6.9775.

The Andersons then issued to Litteken Farms an invoice for \$242,850 for the pricing difference.

In February 2023, The Andersons again attempted to resolve the issue.

Litteken Farms argues that The Andersons has no claim to damages for the following reasons:

After a phone call between the parties in March 2022, Litteken Farms spoke with an employee of The Andersons on two separate occasions in person about how The Andersons was trying to resolve the issue.

Litteken Farms sought that The Andersons take responsibility for wrongfully enrolling Litteken Farms in the two-year pricing programs.

The Andersons has not provided documentation of any pricing bulletins as set forth in NGFA Arbitration Rule 3.

The Andersons had a duty to seek excuse of performance on behalf of Litteken Farms in connection with the points for delivery of the contracted corn.

NGFA Grain Trade Rule 28 required that The Andersons terminate the two-year contracts upon notice of Michael Litteken’s intent to retire.

Litteken Farms argues that The Andersons has overstated damages in its claim because the contracts should have been terminated on December 7, 2021, when Michael Litteken announced his retirement.

THE DECISION:

The arbitrators reached the following unanimous conclusions:

All four of the contracts in dispute state that they are subject to NGFA Grain Trade Rules with fully executed signatures of both the Buyer and Seller.

The Andersons issued Litteken Farms three options to terminate the contracts and Litteken Farms failed to give any clear decision of its choice for termination of the contracts.

Each party involved was in possession of signed executed contracts and the accompanying pricing addendums. Contracts were clearly signed by Michael Litteken for Litteken Farms and a representative for The Andersons.

Because both Litteken Farms and The Andersons were in possession of the signed contracts in question, Litteken Farms has no argument for stating that it was not aware of the two-year contracts it entered into, prior to announcing his retirement.

The NGFA Grain Trade Rules establish that damages are calculated based on the respective contract cash prices less the closing market cash price, following default of the contract in question. In Litteken Farms' arguments, it improperly calculates damages because it used CBOT Dec 22 futures and did not include a consideration for basis.

THE AWARD

The arbitrators decided in favor of The Andersons in the amount of \$242,850 with no award for interest charges.

Decided: August 1, 2024

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

Andrew Fullerton, *Chair*
Director of Projects Commercial
Bartlett Grain Company
Kansas City, MO

Douglas Balvin
General Manager
Canby Farmers Grain Co.
Canby, MN

James Lee Hardy III
General Manager
CHS Northern Grain
St. Hilare, MN