



## **NACMA ARBITRATION AWARD**

**CLAIMANT – ABB Grain Ltd**  
&  
**RESPONDENT – Valley Produce Co.**

### **JUDGMENTS**

1. NACMA Arbitration No. 7 - Award dated March 2005

### **ARBITRATORS**

- Kim Vater – Arbitration Committee Chairman nominated by NACMA
- Mark Thiele – arbitrator nominated by the Claimant
- Tony Welbourn – arbitrator nominated by NACMA

### **DETAILS**

- This dispute involved a contract involving the supply of oats using standard NACMA terms and conditions of sale.
- The delivery period was specified.

### **DISPUTE**

- The Respondent failed to take delivery on a falling market.

### **CLAIM:**

- The Claimant claimed damages.

### **COMMERCIAL SETTLEMENT**

- The Claimant (ABB Grain) placed a Claim to the Committee. The Respondent refused the invitation to participate in the arbitration, however they did contact NACMA on the day when their defence was due requesting information on the process and how parties have enforced NACMA awards, i.e. through Court orders which occasions additional expense.
- The buyer subsequently contacted ABB Grain and negotiated a commercial settlement.

### **LESSONS FOR MEMBERS**

- A Full Arbitration does not require the consent of both contracting parties to proceed. NACMA is able to appoint additional arbitrators in the absence of cooperation by one of the contracting parties. Dispute Resolution Rules 6.3.8
- Contracts stand on falling markets.
- NACMA Awards are backed by Court Orders.
- NACMA arbitration is mandatory when contract terms refer to NACMA Trade Rules (NACMA 26.0)

## **FULL AWARD**

### **Introduction**

By a contract dated 27/3/03 ("the Contract") incorporating the NACMA Trade Rules, the Claimant agreed to supply 100 metric tonnes of oats to the Respondent with delivery 1 April 2003 to 30 June 2003.

The Respondent did not take delivery of any grain from the Claimant which resulted in the Claimant reselling the grain at a lower price.

The Claimant referred the dispute arising under the Contract between itself and the Respondent to NACMA for arbitration.

The Respondent did not accept the invitation to participate in the arbitration and hence NACMA was obliged to nominate a third arbitrator.

Submissions were only received from the Claimant; however a commercial settlement was negotiated between both parties prior to arbitration.

### **Award**

Both parties have noted that without any admission of liability, the parties have reached a settlement of this dispute prior to arbitration.

By consent, the Arbitration Committee made the following award:

1. That the Arbitration process be dismissed with no order as to costs.