



# National Grain and Feed Association Arbitration Decision

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1250 I (Eye) Street, N.W., Suite 1003  
Washington, DC 20005-3922

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

March 20, 2015

## CASE NUMBER 2706

**PLAINTIFF:** AGVENTURES NW, LLC, ODESSA, WA

**DEFENDANT:** SHAFER COMMODITIES, INC., VANCOUVER, B.C.

### STATEMENT OF THE CASE

The seller, AgVentures NW, LLC (AgVentures), and the buyer, Shafer Commodities, Inc. (Shafer), entered into a sales contract for 37,904.87 cwt of U.S. No. 1 canola on December 7, 2012 (contract no. 3234). The contract provided for delivery from December 10, 2012 to January, 1, 2013, at the fixed price of \$29.85/cwt. The contract also contained the following terms:

Comment: DEL IEO  
REPLACES IEO CONTRACT 3229.

90% ADVANCE ON 80 TONS REQUIRED PRIOR TO DAILY SHIPMENT

The contract further provided for arbitration of any subsequent disputes under the NGFA rules.

The arbitrators noted that contract 3234 constituted the full assumption and replacement of a previous contract between Inland Empire Oilseeds (IEO) and Ag Ventures (contract no. 3229). While AgVentures was delivering canola to IEO under contract 3229, IEO and Shafer had a tolling arrangement whereby Shafer received co-products from the canola being delivered by AgVentures. When IEO subsequently became unable to make payments on the delivered canola, Shafer assumed the obligations of the contract between IEO and AgVentures in full so that Shafer would continue to receive the co-products.

This dispute concerns AgVentures's claim that Shafer failed to perform its obligations under contract 3234 after IEO went out of business. AgVentures claimed \$38,211.92 in total damages, which consisted of \$23,599.12 for losses under the contract and \$14,612.80 for interest, storage and other fees.

### THE DECISION

AgVentures claimed that Shafer had a binding agreement to fulfill its obligations under contract 3234. Ag Ventures argued that the failure of IEO's business did not prevent or relieve Shafer from completing its contractual obligations under the contract.

Shafer argued that AgVentures "knowingly frustrated" contract 3234 by commencing actions against IEO that resulted in IEO's eventual closure. Shafer further maintained that it was AgVentures's obligation to contact Shafer to discuss the situation and offer advice on other outlets for the product. Shafer also argued that given the failure of IEO's business the concept of *force majeure* applied to this case and relieved Shafer of its contractual obligations with AgVentures.

Both Shafer and AgVentures in their arguments asserted and disputed claims related to numerous alleged verbal communications between the parties. However, the arbitrators determined that the alleged verbal communications were not dispositive or entitled to significant weight given the requirements in the NGFA Grain Trade Rules that verbal agreements and amendments to contracts be confirmed in writing.

The arbitrators concluded that there was no merit to Shafer's arguments that the failure of IEO's business or the subsequent bankruptcy proceedings invoked *force majeure* or otherwise affected the obligations between AgVentures and Shafer under contract 3234. As specifically stated in the contract itself – as well as in the December 7, 2012 email from AgVentures to Shafer that Shafer provided with its surrebuttal argument – contract 3234 was a replacement for the contract with IEO. IEO's business failure and the related legal proceedings were consequently irrelevant to the contract between AgVentures and Shafer.

The arbitrators relied upon the NGFA Grain Trade Rules, particularly NGFA Grain Trade Rule 28 (Failure to Perform), in their decision in this case. The arbitrators concluded that both parties failed to fully document their positions in accordance with Rule 28. The arbitrators dismissed the verbal communications alleged by the parties based upon NGFA Grain Trade Rule 30(C) (Communications), which provides that verbal communication must be confirmed with written communication. The only written communication presented to the parties by the arbitrators was contract 3234.

## THE AWARD

The arbitrators awarded \$23,599.12 in damages to AgVentures for its direct losses under contract 3234. The arbitrators declined to award interest or the other damages claimed by Ag Ventures. The arbitrators concluded that Ag Ventures did not provide adequate evidence of any amendments to the contract or other support entitling it to recover the carrying and other charges claimed.

Decided: February 10, 2015

Submitted with the unanimous consent of the arbitrators, whose names appear below:

**Michelle Mapes, Chair**  
Executive Vice President  
General Counsel & Corporate  
Secretary  
Green Plains Renewable Energy Inc.  
Omaha, NE

**Steve LaChey**  
Grain Division Manager  
Larsen Cooperative Company  
New London, WI

**Lee Paarlberg**  
Manager of Corn Purchasing  
Ingredion, Inc.  
Indianapolis, IN