



National Grain and Feed Association Arbitration Decision

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June 14, 2016

CASE NUMBER 2753

**PLAINTIFF: OMEGA NUTRITION U.S.A., INC.
BELLINGHAM, WA**

**DEFENDANT: MONTANA SPECIALTY MILLS LLC
GREAT FALLS, MT**

STATEMENT OF THE CASE

Omega Nutrition U.S.A., Inc. (Omega) and Montana Specialty Mills LLC (MSM) entered into a sales contract (contract no. 694) and a purchase order (order no. 20213) in May 2014 for the delivery of 2,580 CWT (258,000 lbs.) of U.S. No. 1 Organic Flax. According to the terms of the sales contract (dated May 28, 2014) and the purchase order (dated May 29, 2014), the contracted quantity was six 20-foot containers each weighing 43,000 lbs. at \$1.10/lb. for delivery by truck “FOB” Omega’s plant in Bellingham, WA.

The sales contract and the purchase order were specific with respect to grades, a minimum purity level of 99.0%, moisture levels, and other terms, including that Argentina be the country of origin of the flax. Both the sales contract and purchase order also specifically provided that the flax was to be representative or consistent with the approved pre-shipment sample. The parties signed both the sales contract and the purchase order.

This dispute involves the organic flax shipped in the first two containers by MSM. According to Omega, it rejected the flax delivered on July 24, 2014, because it contained “clumps of wet seed, dark sediment and bugs.” MSM then provided for the shipment to be handled at an “organic cleaning facility” and re-delivered to Omega on August 13-14, 2014. Omega subsequently determined that the flax contained a high amount of soy. Omega isolated the flax in a silo at its facility and after rejecting it, Omega sought return of the \$73,817 paid in advance for that shipment.

Omega claimed that the flax delivered by MSM did not conform to the parties’ contracts because it did not match the sample that was made part of the contracts. Omega states that its products must be free of allergens such as soy. MSM claimed that the re-delivered flax was in accord with the contracts, which MSM states did not refer to soy content.

THE DECISION

The arbitrators ruled in favor of MSM.

The arbitrators determined that the flax was organically grown and then delivered to Omega's plant in Bellingham, WA, within the agreed upon shipping window. No testing for soy was conducted initially on the preapproved sample. Nor does either the sales contract or purchase order refer to soy content.

Omega did not reject the original shipment because of soy content. The original shipment was rejected because of factors that MSM argued were outside of its control. MSM acknowledged Omega's reasons for rejecting the original shipment and took appropriate measures to have the product reprocessed to meet the contract specifications.

In the end, MSM delivered U.S. No. 1 Organic Flax to Omega according to the stated quality and quantity terms and within the prescribed time of shipment under the contracts. The quality of the flax delivered met the 99% purity standard that was agreed to by both parties. The arbitrators concluded that MSM did everything reasonable and customary and within its control to deliver and otherwise meet the contract specifications.

Omega failed in not specifying soy or allergen-free as contract terms. Soy was not identified as a critical factor in this transaction until after the product was delivered. Omega also failed in not timely notifying MSM of rejection of the flax after Omega accepted the redelivered two containers in dispute. It is the receiver's responsibility to properly and timely examine and test the product upon delivery under these circumstances. MSM acted in good faith to apply acceptable quality and even had the product reprocessed above contract specifications at an approved cleaning facility.

The arbitrators' decision was unanimous.

THE AWARD

No damages or attorney fees are awarded to Omega. Loss of the product due to cleaning will remain charged to MSM as this was apparently agreed upon by MSM.

Decided: April 7, 2016

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

Dan DeRouchey, *Chair*
General Manager
Berthold Farmers Elevator LLC
Berthold, ND

Shaun Brooks
President
F.W. Cobs Company Inc.
St. Albans Bay, VT

Anastacio Cabral III
Director
US Commodities, LLC
Minneapolis, MN