



National Grain and Feed Association Arbitration Decision

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October 24, 2016

CASE NUMBER 2781

**PLAINTIFF: JOHN SENINI
YUMA, AZ**

**DEFENDANT: ARIZONA GRAIN INC.
CASA GRANDE, AZ**

STATEMENT OF THE CASE

This dispute involved two purchase contracts between the plaintiff, John Senini, and the defendant, Arizona Grain Inc.: contract no. 0116944 for 10,000 bushels of Westmore Durum Wheat at \$10.80 per bushel (dated October 17, 2014); and contract no. 0117056 for 8,000 bushels of Helios Durum Wheat at \$10.80 per bushel (dated November 20, 2014). The two contracts were signed by both parties.

The following sequence of events led to this dispute:

- Between July 3 and 6, 2015, Mr. Senini delivered 10,038.65 bushels to apply to contract 0116944. The loads in dispute from these bushels had Hard Vitreous Amber Color (HVAC) levels ranging from 36 to 63 according to tests performed by Arizona Grain.
- On July 22, 2015, Arizona Grain issued a check to Mr. Senini in the amount of \$43,824.49. This payment included quality-related discounts of \$63,243.48 (or discounts in the amount of \$6.30 per bushel), providing a net price (before cleaning, grading, and state assessment fees) of \$4.50 per bushel.
- Between June 18 and July 6, 2015, Mr. Senini delivered 7,931.56 bushels to apply to contract 0117056. This was an acreage based contract and the bushel amount to fulfill the contract was not disputed by the parties. The loads in dispute from these bushels tested at HVAC levels ranging from 21 to 66.
- On July 22, 2015, Arizona Grain issued a check to Senini in the amount of \$30,373.63. This payment included quality-related discounts of \$45,583.21 and HVAC discounts of \$1,044.20 (or discounts totaling the amount of \$5.88 per bushel), providing a net amount (before cleaning, grading, and state assessment fees) of \$4.92 per bushel.

Mr. Senini claimed that Arizona Grain rejected his grain without providing notice or reasons until two or three months afterward. Senini argued that, “Even if the two payment checks are deemed to be notice of rejection, notice was given 18 and 19 days after that last shipment of grain.” Mr. Senini also contended that Arizona Grain has not tendered any proof of color testing. According to Mr. Senini, the “color” of the wheat was consistent with contract specifications. Mr. Senini further argued that he was never given the opportunity to review the testing process or even have the grain tested himself. Mr. Senini requested

he be awarded the full contract price for both contracts (\$108,826.69) plus attorney's fees representing 33% of the award (\$35,912.80) for a total award of \$144,912.80.

Arizona Grain argued that the terms of the contracts are clear and unambiguous. Both contracts provided for the following HVAC discounts:

89.9 – 85.0 = \$.15/BU

84.9 – 80.0 = \$.30/BU

UNDER 79.9 SUBJECT TO BUYERS ACCEPTANCE AND DISCOUNTS

Arizona Grain stated that to determine whether grain meets contract specifications, upon receipt of delivery, Arizona Grain takes a sample of 2,200 grams from each truck load for grading purposes. Arizona Grain inspects the sample for several factors including HVAC and then direct the grain into bins of similar quality grain. Arizona Grain then sends the sample to a lab certified by USDA's Federal Grain Inspection Service for independent inspection, grading, and analysis. Within approximately 48 hours from delivery of the grain to Arizona Grain, the grower has access to these testing results using Arizona Grain's online "IView" program. Arizona Grain stated that it sent a letter to all of its growers, dated April 18, 2015, which encouraged them to enroll in Arizona Grain's IView program that allows growers to "view contracts and balances, scale tickets, grades and accounts receivable" through an account on Arizona Grain's website.

Arizona Grain maintained that Mr. Senini had entered into a separate September contract with Arizona Grain consisting of identical terms. According to Arizona Grain, Mr. Senini received discounts for HVAC of 43 to 78 and did not dispute the discounts.

Arizona Grain stated that approximately two weeks after Mr. Senini received a settlement sheet for the contracts in dispute, he contacted a salesperson for Arizona Grain to complain. During this conversation, Arizona Grain's salesperson offered to undo the transaction and return to Mr Senini wheat of the same quantity and quality so he may attempt to find a better market. According to Arizona Grain, Mr. Senini never responded to the offer.

THE DECISION

After extensive discussion and consideration of the facts, arguments and documentation provided by the parties, the arbitrators reached the following conclusions:

- Mr. Senini argued that Arizona Grain rejected his grain without proper notice. The arbitrators noted, however, that Arizona Grain presented evidence of correspondence to its growers informing and encouraging them to sign up for a program where they could view test results within about 48 hours. Ultimately, in this case none of the loads in dispute were in fact rejected. Thus, the arbitrators determined there was no basis for Mr. Senini to claim he was never notified the grain was rejected.
- Mr. Senini asserted that Arizona Grain did not tender any proof of color testing and that he was never given the opportunity to review the testing process, or even have the grain tested himself. The arbitrators determined, however, Arizona Grain provided documentation of its testing process and

relied upon official results from laboratories approved by the U.S. Department of Agriculture's Federal Grain Inspection Service. Mr. Senini could have taken his own samples of the grain and submitted them to an approved lab for comparison; however, the arbitrators noted that the contracts provide for "Grades: Destination." Thus, the results of the tests by Arizona Grain at destination would be the determining grade.

- Mr. Senini requested an award of the full contract price for each contract. The arbitrators concluded the contracts provided with respect to HVAC that levels under 79.9 were "Subject to buyers acceptance and discounts." Arizona Grain contacted Durum Wheat buyers, but could find none willing to buy the grain. Arizona Grain looked into the local feed markets to arrive at a price for the wheat. The values identified during the delivery period averaged \$4.31 per bushel. Arizona Grain paid Mr. Senini \$4.50 per bushel for his grain. Therefore, the arbitrators determined that Arizona Grain's calculation of the amounts due to Mr. Senini were fair and reasonable.

Further, Arizona Grain presented sworn affidavits from its employee who offered to Mr. Senini the option to undo the transaction (and two co-workers who overheard him making the offer).

THE AWARD

No damages are awarded in this case. The parties will pay their own attorney fees.

Decided: September 26, 2016

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

Rango Springer, *Chair*
Merchandising Manager
Stratford Grain Co.
Stratford, TX

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

Lacey Seibert
Grain Originator
Cooperative Producers Inc.
Hastings, NE