



NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

October 16, 1986

ARBITRATION CASE NUMBER 1627

Plaintiff: ConAgra Inc., Corona, Calif. (seller)

Defendant: BOS Commodities, Chino, Calif. (buyer)

Statement of the Case

This breach-of-contract case involved the failure of the defendant, BOS Commodities (buyer) to take delivery from the plaintiff, ConAgra (seller) on two contracts.

The main point in contention was the disagreement between both parties as to what the product actually was. The plaintiff, ConAgra, maintained the product was a mixture of almond shell (70 percent) and almond hull (30 percent). The defendant, BOS Commodities, maintained that just the opposite was the case; that is, the shipment was 70 percent almond hull and 30 percent almond shell.

Additional points of contention raised were that each party claimed damages against the other for defaulting on the contracts. ConAgra claimed damages totaling \$62,966.30 and Bos Commodities claimed damages totaling \$10,092.95.

The product specifications (specifically with respect to fiber) are paraphrased from the commercial feed law and regulations of California (see Appendix A), and are presented below:

--almond hull: 15 percent maximum crude fiber.

--almond hull and shell: more than 15 percent, but less than 29 percent crude fiber.

--almond shell: more than 29 percent crude fiber.

(Note: The "more than 29 percent" is significant as this is the level at which the mixture becomes more than 50 percent shell and therefore is called "almond shell." Pure almond shell is approximately 41-42 percent crude fiber.)

The Results

ISSUE	BOS DAMAGES	
	<u>Requested</u>	<u>Awarded</u>
1. Buy-in by BOS	325 X \$7.00 = \$2,275	None

No damages were awarded because BOS Commodities did not comply with normal industry practice of notifying the seller of its intention to buy-in against the contract.

2. Loss of Profit Margin by BOS	\$7,817.95	None
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Profit margin, as a separate identifiable transaction, is not a contractual item covered by the National's Trade Rules. Profit margins are built into the contracts and normally are realized through the proper liquidation of the contracts or the use of appropriate remedies.

BOS Commodities did not provide contractual evidence of any sales. Assuming the sales did exist, BOS Commodities did not properly utilize its option to buy-in the tonnage to cover its sales. Therefore, it gave up its option to realize its profit margin. No damages were awarded.

ISSUE	CONAGRA DAMAGES	
	<u>Requested</u>	<u>Awarded</u>
3. Discount Invoice by BOS	\$10,518.45 ¹	\$10,518.45 ²

BOS Commodities unilaterally discounted a number of invoices because of its determination of bad quality. This is disallowed by the arbitration panel because BOS Commodities, by receiving the product from ConAgra and delivering to its customers, did accept it and, therefore, must pay the full contract price. ConAgra was awarded the amount requested.

4. Erroneous Balance; Discounted (Invoice in Issue No. 3)	\$1,051.72	\$ 1,051.72 ²
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In its unilateral discounting of invoices, BOS Commodities erroneously discounted a truckload belonging to an inapplicable contract. ConAgra was awarded the amount it requested.

5. Breach of Contract No. 111228	\$19,344.89	None
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No damages were awarded to ConAgra because ConAgra's Contract No. 111228, dated Jan. 8, 1985, specified almond hull and shell, and ConAgra's evidence indicated that the product was almond shell, as described in Exhibit A (almond shell, 70 percent, and almond hull, 30 percent, as described by ConAgra).

¹ Adjust for erroneous invoice.

² Interest of one percent (1 percent) over prime after date of default should be made on items No. 1 and No. 2 on awards to ConAgra based upon the following schedule:

- May 20, 1985 - June 27, 1985 = 10 percent
- June 18, 1985 - March 6, 1985 = 9.5 percent
- March 7, 1986 - June 1, 1986 = 9 percent
- June 1, 1986 - Present = 8.5 percent

6. Breach of Contract No. 111261

\$30,875.00

None

ConAgra's Contract No. 111261, dated Jan. 25, 1985, specified almond shell and hulls. BOS Commodities signed and accepted the contract. BOS Commodities' Contract No. 850125, dated Jan. 25, 1985, specified just the opposite, namely, almond hull and shell. As was the case with all of its previous contracts, ConAgra signed and accepted the contract. Since a direct conflict existed in the descriptive titles, the arbitration panel had to decide which title should prevail. The panel decided that most of the evidence indicated that the product was supposed to be almond hull and shell. A summary of some of this evidence is as follows:

- ConAgra was aware of BOS Commodities' quality requirement prior to the two disputed contracts. ConAgra's Contract No. 111188, dated Dec. 14, 1984, specified almond hull and shell. Subsequent deliveries against this contract were documented by invoices specifying almond shell. After several deliveries, both parties mutually agreed the product was "...not as described and the undelivered balance was canceled at no penalty to either party." It appeared that both ConAgra and BOS Commodities mutually agreed that BOS Commodities did not want almond shell.
- Both seller's and buyer's contracts, on the original trial truckload which the follow-on contracts were to be based, specified almond hull and shell.
- Both seller's and buyer's first follow-on contracts, based on the trial truckload, specified almond hull and shell.

Based upon the above evidence, as well as other facts, the arbitration panel concluded that the product was supposed to be almond hull and shell and that ConAgra did not meet the contractual requirement. No damages were awarded.

Submitted with the consent and approval of the arbitration panel whose names are listed below.

Dave Hansen
Cargill Inc.
Minneapolis, Minn.

Wellington White
O.H. Kruse Grain and
Milling Co.
Ontario, Calif.

Thomas Ash
Homer M. Thomas
Co. Inc.
Riverside, Calif.

Appendix A

California Department of Food and Agriculture
Commercial Feed Law and Regulations

The following are the relevant sections of the California Commercial Feed Law and Regulations applicable to Arbitration Case Number 1627.

(c) Alfalfa Meal is obtained from the grinding of the entire alfalfa hay, without the addition of any alfalfa stems, alfalfa straw, or foreign material, or the removal of the leaves and containing not less than 15 percent protein and not more than 30 percent crude fiber.

(d) Alfalfa Leaf Meal is the ground product consisting chiefly of leafy materials separated from alfalfa hay containing not more than 18 percent crude fiber.

(e) Forage Meal is a mixture of alfalfa hay with alfalfa straw or other hays, straws or legumes and contains not less than 8 percent protein and not more than 38 percent fiber.

(f) Alfalfa Stem Meal is the ground product remaining after the separation of the leafy material from alfalfa hay or meal. When used in a mixture, the maximum percent of stem meal shall be stated in the list of ingredients.

(g) Alfalfa Straw Meal is the ground straw remaining after separation of the seed. When used in a mixture, the maximum percent of straw meal shall be stated in the list of ingredients.

(h) Alfalfa pellets, cubes, wafers, and other extruded forms of alfalfa are obtained from processing the entire alfalfa, without the addition of any alfalfa stems, alfalfa straw or foreign material and shall contain not less than 15 percent crude protein and not more than 30 percent crude fiber.

(i) If the alfalfa products defined in this section do not comply with the standards indicated in every respect, the term "forage" must be substituted for the word "alfalfa" in the name of the product.

2773.5. Almond Hull Products. (a) Almond hulls are obtained by drying that portion of the almond fruit which surrounds the nut. They shall not contain more than 13 percent moisture, nor more than 15 percent crude fiber, and not more than 9 percent ash. If they contain more than 15 percent but less than 29 percent crude fiber, they shall be labeled "Almond Hull and Shell," and the maximum percent of crude fiber shall be stated. If the crude fiber exceeds 29 percent, the product shall be labeled "Almond Shell." If the ash exceeds 9 percent, the term "and dirt" shall be included in the product name. Almond hull products shall be free of foreign material, including large twigs, branches, plastic, glass and metal. Almond hulls shall be processed in accordance with good manufacturing practices.

(b) When the following almond hull products are used in a mixed feed, the maximum percent shall be stated.

- (1) Almond hull and shell.
- (2) Almond shell.
- (3) Almond products containing more than 9 percent ash.