



December 9, 2024

CASE NUMBER 3081

**PLAINTIFF: THE ANDERSONS, INC.
OVERLAND PARK, KS**

**DEFENDANTS: C&S ORGANICS AND ITS PARTNERS, COLTON AND
STEPHANIE OSBORN
COZAD, NE**

STATEMENT OF THE CASE

In March of 2021, The Andersons, Inc. (Andersons) entered into two purchase contract agreements for organic corn with C&S Organics and its partners, Colton and Stephanie Osborn (collectively, C&S) to be delivered to Andersons' Kearney, Nebraska facility. Contract 6173 consisted of 50,000 bushels of organic corn at \$7.70 per bushel for the delivery period of October 1 through December 31, 2021; and contract 6174 consisted of 75,000 bushels of organic corn at \$8.00 per bushel for the delivery period of January 1 through April 30, 2022.

Deliveries were made to Andersons in Kearney during the October 1- December 31 delivery period for contract 6173, after a few text messages and phone conversations between the parties regarding their ability to ship/receive grain and general logistics. These included a phone call during which C&S indicated it would be short about 30,000 bushels on contract 6173. Text messaging continued throughout the fall and into the winter of 2021/2022. C&S argued Andersons promised trucks to help haul C&S' corn during harvest (which never occurred) and Andersons was, at times, unwilling to receive deliveries of grain.

Deliveries were applied to contract 6173 from when the deliveries began and beyond the delivery period stated on the original contract. The final delivery application occurred in January 2022, at which time the bushel obligation in contract 6173 was completely satisfied. C&S stated that loads were also made to other organic corn buyers during this time.

Application of the bushels to contract 6173 after the stated delivery period was of issue in this case. C&S argued that corn delivered after the stated delivery period for 6173 should have been applied to contract 6174 (with a delivery period of Jan. 1 - April 30, 2022). C&S argues that an agreement was never reached to extend the delivery period for contract 6173. Settlements were made and accepted by C&S for contract 6173.

C&S continued to make deliveries of organic corn until February 9, 2022, and those loads were applied by Andersons to contract 6174. 26,973 bushels were applied to contract 6174, leaving 48,207 bushels outstanding. Andersons made several attempts to contact C&S regarding further delivery of corn. On March 29, 2022, an Andersons' employee sent a text message to Colton Osborn stating that C&S' outstanding contract balance totaled 59,214 undelivered bushels. Andersons' employee also offered a

breakdown of individual contracts to which Colton Osborn replied, “OK thank you.” No further follow-up on the contract balances by either party occurred. C&S indicated that it was out of organic corn on May 18, 2022. On June 30, 2022, Andersons produced an invoice for \$236,214.30, citing contract non-performance on contract 6174 for a total of 48,207 bushels.

THE DECISION:

The arbitrators find unanimously in favor of Andersons.

Regarding the issue of whether Andersons owed assistance with trucking, the arbitrators determined that both the contracts in question were created on a delivered basis – and not FOB. Had the contracts been bought on a FOB basis, trucking would have been required of Andersons to haul said grain.

Regarding the application of bushels to contract 6173 after the stated delivery period, the arbitrators concluded that since payment was accepted by C&S for the bushels applied to that contract (including the loads after Dec. 31), the loads applied to 6173 should stand as-is. Pursuant to NGFA Grain Trade Rule 4, alteration of the contract was accepted by the seller upon acceptance of the settlements and payment for said contract.

The facts of the case indicate that C&S did not fully perform on its contract obligations to Andersons. Neither party in the case is disputing default on the contracts occurred. The central issues in dispute appear to rest upon the date and price of cancellation.

The arbitrators referred to NGFA Grain Trade Rule 28 (A)(3), which states in the case of seller’s non-performance, the buyer is to cancel the defaulted portion of the contract at fair market value based on the close of the market the next business day. Since C&S indicated it was completely out of organic corn on May 18, 2022, the arbitrators conclude the proper cancellation date was May 19, 2022.

This leads to the next question of pricing for cancellation. The evidence presented in the case provided multiple pricing sources and alternatives for determining a fair and reasonable cancellation price. Ultimately, the arbitrators decided to average pricing from two sources: 1) The Jacobsen, a private commodity price reporting service (based upon price reporting for the week ending May 20, 2022); and 2) USDA (based upon price reporting on May 18, 2022). Actual reporting was unavailable for the date of May 19, 2022.

THE AWARD

The arbitrators award \$183,186.60 to The Andersons, Inc. from C&S Organics and its partners, Colton and Stephanie Osborn. The arbitrators’ award is calculated as follows:

\$11.80/bu. = averaging of prices from the private commodity reporting service (\$11.50/bu.) and
USDA (\$12.10/bu.)
\$11.80 - \$8.00 (contract price) = \$3.80 (market difference)
\$3.80 x 48,207 (outstanding bushel obligations from contract 6174) = \$183,186.60

No interest or legal fees are awarded.

Decided: September 24, 2024

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

Brian Liedl, *Chair*
Director of Merchandising
United Grain Corporation
Vancouver, WA

Brett Harrison
Grain & Truck Dept. Manager
Morrow County Grain Growers
Lexington, OR

Abbey Miedema
Grain Marketing Specialist
Agtegra Cooperative
Wolsey, SD