



Arbitration Decision

National Grain and Feed Association

October 25, 1996

Arbitration Case Number 1764

Plaintiff: Farmers Grain Dealers Inc., Kansas City, Mo.

Defendants: Horse Creek Farms and Patrick J. Esch, Springfield, Mo.,
and Dennis Esch, Omaha, Neb.

Findings and Default Judgment

Farmers Grain Dealers Inc. (plaintiff) filed a request for arbitration with the National Grain and Feed Association (NGFA) by letter dated Jan. 24, 1996 and received by the NGFA on Jan. 29, 1996. Farmers Grain Dealers Inc. based its request for arbitration on express provisions providing for arbitration by the NGFA contained in contracts entered into between the plaintiff and defendant Horse Creek Farms. Farmers Grain Dealers Inc. sought a joint and several award of damages in the amount of \$145,790, plus costs and expenses against Horse Creek Farms and its partners, Patrick J. Esch and Dennis Esch.

Acting upon the request for arbitration filed by the plaintiff, a NGFA contract for arbitration was prepared and mailed by the NGFA on Jan. 31, 1996 to plaintiff's representative for execution, with copies to the named defendants. The NGFA contract for arbitration was executed by an officer of Farmers Grain Dealers Inc. and returned to the NGFA along with the arbitration service fee of \$1,000. By letter dated Feb. 7, 1996, the NGFA mailed (by U.S. certified mail) the NGFA contract for arbitration to Horse Creek Farms, 717 Colorado St., Springfield, Colo., 81703. The NGFA requested that the defendants execute the NGFA contract for arbitration and return the signed contract and the requested arbitration service fee to the NGFA within 15 days of receipt. The certified mail domestic return receipt shows that the letter was received by Horse Creek Farms, with the date

of delivery being stated as "2-13-96" and signed for by an "Arlene Esch."

The defendants failed to return the NGFA contract for arbitration within 15 days of receipt and failed to pay the requested arbitration service fee. Subsequently, by letter dated July 17, 1996, the NGFA received notice of, and a copy of, a court order compelling arbitration of this dispute issued by the Baca County, Colorado District Court. On July 25, 1996, the NGFA mailed a further request to Horse Creek Farms, 717 Colorado St., Springfield, Colo., 81703, requesting that the NGFA contract for arbitration be signed and that the arbitration service fee be paid. The certified mail domestic receipt showed that the letter was received by Horse Creek Farms with the date of delivery being stated as "7-29-96" and was signed by an "Arlene Esch." A copy of the request was also mailed to Bobie A. Nolte, Esq., the attorney of record for Dennis Esch.

Subsequently, the named defendants have failed to respond to any of the NGFA's requests for execution of the NGFA contract for arbitration. The court order compelling arbitration of the dispute between the parties appeared to have been issued on July 8, 1996. The plaintiff forwarded a copy of the court order to the NGFA by letter dated July 17, 1996, which was received by the NGFA on July 22, 1996. The plaintiff, therefore, complied with the provisions of Section 3(d) of the NGFA Arbitration Rules by submitting the renewed request for arbitration within 30 days of issuance of the court order compelling arbitration. Defendants have

failed to comply with Section 5(d) of the NGFA Arbitration Rules, which provides, among other things, that the NGFA "contract for arbitration is to be completed within fifteen (15) days from the date the party receives the contract from the National Secretary."

At this point, there is no indication that any of the named defendants intend to execute the NGFA contract for arbitration or otherwise comply with the provisions of the NGFA Arbitration Rules. The plaintiff has requested that the NGFA enter a default judgment against the named defendants for their failure to comply with the provisions of the NGFA Arbitration Rules¹.

Section 1 of the NGFA Arbitration Rules vests in the National Secretary the responsibility and authority to administer the NGFA Arbitration System. As such, the National Secretary makes such procedural decisions as are necessary to implement the provisions of the NGFA Arbitration Rules. Given the court order compelling arbitration before the NGFA and the defendants' failure

to comply with the NGFA Arbitration Rules, it is appropriate to enter the requested award in favor of the plaintiff, Farmers Grain Dealers Inc., against each of the named defendants.

It Is Therefore Ordered That:

Farmers Grain Dealers Inc. is awarded a judgment against each of the defendants (Horse Creek Farms, Patrick J. Esch and Dennis Esch), jointly and severally, in the amount requested in its complaint, being \$145,790, plus its arbitration service fee of \$1,000 paid in this case. Interest on the judgment of \$146,790 shall accrue from July 8, 1996 until paid at the statutory judgment rate in effect in the State of Colorado.

Dated this 8th day of October, 1996.

National Grain and Feed Association

By: **David C. Barrett Jr.**
National Secretary

¹ The defendants were notified of the plaintiff's motion and of the National Secretary's proposed findings by certified mail letter dated Sept. 24, 1996. The NGFA is also in receipt of a copy of a court order issued on Sept. 16, 1996 by Baca County Colorado District Court which denied a "Motion to Reconsider Order Compelling Arbitration" between the parties in this arbitration case.