



Arbitration Decision

National Grain and Feed Association

April 23, 1998



Arbitration Case No. 1858

Plaintiff: The Andersons Inc., Maumee, Ohio

Defendant: Andress Grain, Martin, Mich.

Findings and Default Judgment

The Andersons Inc., the plaintiff, submitted a request for arbitration with the National Grain and Feed Association (NGFA®) by letter dated Sept. 10, 1997, which was received by the NGFA on Sept. 12, 1997.

The plaintiff alleged that Andress Grain, the defendant, failed to pay amounts owed to The Andersons as a result of cancellation¹ of the defendant-seller's "to arrive" cash contracts (Contract Nos. 24754, 24449, 24512, 25456, 26469, 23791, 27191, 27228, 26968 and 22316) with The Andersons. The Andersons claimed damages in the amount of \$84,921.19 for market differences between the contract price and replacement cost at the time of cancellation, as well as contract cancellation charges, attorney fees, costs of collection and interest.

Acting upon the plaintiff's request for arbitration, the NGFA prepared a National Grain and Feed Association Contract for Arbitration and sent it to the plaintiff for execution by letter dated Sept. 22, 1997. Likewise, the defendant was notified of The Andersons' arbitration complaint by letter² from the NGFA dated Sept. 22, 1997. The NGFA's letter dated Sept. 22, 1997 was sent to Andress Grain via U.S. certified mail. However, the U.S. Postal Service returned the letter to the NGFA with the indication

that the letter was "unclaimed" after making at least two attempts to deliver it (Sept. 27th and Oct. 6th).

The Andersons, as required under the NGFA Arbitration Rules, executed the NGFA Contract for Arbitration and returned the executed contract with the arbitration service fee of \$800 (received by NGFA on Oct. 6, 1997)

Thereafter, the defendant was sent a letter via U.S. Postal Service certified mail dated Oct. 10, 1997 that requested that he execute the NGFA Contract for Arbitration and pay the arbitration service fee. The U.S. Postal Service returned the letter to the NGFA with the indication that the letter was "unclaimed" after making at least three attempts to deliver it (Oct. 14th, Oct. 21st and Oct. 31st).

The NGFA, by a letter dated Oct. 22, 1997, sent another request to the defendant requesting his signature on the NGFA Contract for Arbitration and payment of the arbitration service fee. Federal Express records verified that the Oct. 22nd letter was delivered and signed for by a "J. Watson" on Oct. 28, 1997. Federal Express is a "recognized overnight delivery service" within the meaning of Section 10 of the NGFA Arbitration Rules.

¹ The term "cancellation" as used here means the termination of the contracts as a result of a breach or default by one of the parties. NGFA Grain Trade Rule 10 expressly addresses cancellation of defaulted contracts. Both the NGFA Trade Rules and NGFA Arbitration Rules were incorporated into the parties' contracts.

² All notices and correspondence were sent to the defendant at the following address: Andress Grain, 899 116th Avenue, Martin, Mich., 49070.

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The NGFA's Oct. 22nd correspondence also advised the defendant that:

"You should note that The Andersons Inc.'s complaint points out that NGFA arbitration on its claims is based on the arbitration provisions contained in the contracts entered into with you. Section 3(a)(2) of the NGFA Arbitration Rules expressly provides, among other things, that: '[I]f the contract in dispute between a member and a nonmember provides for arbitration by the National Association or under its Arbitration Rules, the parties to the contract shall be deemed to have consented to arbitration under these Arbitration Rules.'"

The plaintiff, by letter dated Nov. 20, 1997, requested that the NGFA enter a default judgment against Address Grain in the total amount of \$93,255.08. The defendant failed to return the NGFA Contract for Arbitration or pay the arbitration service fee as required under Section 5(d) of the NGFA Arbitration Rules. Nevertheless, the NGFA sent an additional letter to the defendant dated Nov. 24, 1997 notifying the defendant that he was required to execute the NGFA Contract for Arbitration and pay the required arbitration service by Dec. 4, 1997, or a default judgment would be entered against him. That correspondence was sent via Federal Express on Nov. 24, 1997. Federal Express records verified that the Nov. 24th letter was delivered and signed for by a "J. Seekman" at the defendant's address on Nov. 25, 1997.

The NGFA, by letter dated Dec. 12, 1997, sent the final notice to the defendant via Federal Express. This letter directed the defendant to sign the arbitration contract and submit the arbitration service fee by Dec. 19, 1997, and advised that failure to do so would result in the entering of a

default judgment against him. Federal Express records verified that the Dec. 12th letter was delivered and signed for by a "J. Watson" at the defendant's address on Dec. 15, 1997.

The plaintiff requested the entry of a default judgment against the defendant based upon the defendant's failure to comply with the NGFA Arbitration Rules. The plaintiff included a sworn affidavit verifying the validity of the contracts and the cancellation invoices. The documents submitted by the plaintiff included a "Purchase Contract and Confirmation" for each of the transactions. Each of the documents showed a transaction with "Address Grain" and also referenced "Norm Address" on the first page. All but one of the "Purchase Contract and Confirmation" documents also contained an actual signature on the line "Seller Signature & Confirmation" under the typed name of "Norm Address." Each contract also contained the following language:

"Both parties agree: (a) this transaction is made in accordance with the Grain Trade Rules of the National Grain & Feed Association and the parties will be bound thereby; and (b) any disputes or controversies arising out of this contract shall be arbitrated by the National Grain & Feed Association, pursuant to its arbitration rules."

Section 5(d) of the NGFA Arbitration Rules imposes a duty on each party to complete and return the NGFA Contract for Arbitration "within fifteen (15) days from the date the party receives the contract from the National Secretary." The defendant did not comply with the NGFA Arbitration Rules. Thus, it was appropriate to enter the requested award in favor of the plaintiff, The Andersons Inc., against the defendant, Address Grain.

The Award

Therefore, it is ordered that:

The Andersons Inc. is awarded a judgment against Address Grain in the amount of \$93,255.08, itemized as follows:

\$22,725.00	Cancellation Invoice No. 64-6139
11,200.00	Cancellation Invoice No. 64-6140
12,866.17	Cancellation Invoice No. 64-6160
2,435.00	Cancellation Invoice No. 64-6169
17,400.00	Cancellation Invoice No. 64-6177
18,295.02	Cancellation Invoice No. 64-6213
8,333.89	Compound interest (calculated at 9 percent per annum from the date of each contract cancellation to Nov. 20, 1997)
\$93,255.08	Total Judgment Requested as of Nov. 20, 1997

Compound interest on the judgment of \$93,255.08 shall accrue at the rate of 9 percent per annum from Nov. 20, 1997 until the sums are paid in full.

Dated: March 19, 1998.

National Grain and Feed Association

By: David C. Barrett, Jr.
National Secretary