



Arbitration Decision

National Grain and Feed Association

December 17, 1998

Arbitration Case Number 1951

Plaintiff: Pattison Bros. Mississippi River Terminal Inc.,
aka Pattison Bros. MRT, Inc., Fayette, Iowa

Defendant: Medberry Farms, aka Medberry Farms, Inc., Elgin, Iowa

Findings and Default Judgment

Pattison Bros. Mississippi River Terminal Inc. (Pattison), the plaintiff, requested the entry of a default judgment in the amount of \$50,912.50, plus interest, against Medberry Farms (Medberry), the defendant. The judgment was granted for the reasons set forth herein.

Pattison filed a request for arbitration with the National Grain and Feed Association (NGFA) by letter dated April 9, 1998, which was received on April 21, 1998. Pattison's arbitration complaint alleged, among other things, that Medberry had breached four written and signed contracts¹ in which Medberry had contracted to sell and deliver various quantities of No. 2 yellow corn. Pattison's arbitration complaint also stated that each of the contracts contained provisions requiring the parties to submit unresolved disputes to NGFA arbitration. Likewise, Pattison's complaint indicated that the defendant's attorney, Steven P. Wandro, had "requested that all communication regarding Medberry Farms and contracts should be directed to him²."

Acting upon Pattison's complaint, the NGFA prepared a

NGFA Contract for Arbitration and sent it to Pattison for execution by letter dated April 21, 1998. The NGFA's records also showed that the defendant's attorney was sent initial notice of Pattison's complaint by letter dated April 21, 1998 via U.S. Postal Service certified mail³.

As required by the NGFA's Arbitration Rules, Pattison executed the NGFA Contract for Arbitration and returned the executed contract (by letter dated May 5, 1998) with the arbitration service fee of \$755, which were received by the NGFA on May 12, 1998.

Subsequently, the NGFA sent a letter via U.S. Postal Service certified mail⁴ dated May 12, 1998 to the defendant's counsel, Steven P. Wandro, requesting execution of the NGFA Contract for Arbitration and payment of the arbitration service fee of \$755.

No response to the May 12, 1998 letter was received from the defendant or his attorney. Therefore, the NGFA by letter dated July 14, 1998 sent another request⁵ to attorney Wandro,

¹ Contract numbers 220500, 220501, 220570 and 220571.

² Pattison's complaint indicated such correspondence should be sent to: "Mr. Steven P. Wandro, 2501 Grand Avenue, Suite B, Des Moines, Iowa 50312."

³ The U.S. Postal Service domestic return receipt "Article Number Z 015 218 760" showed that the letter was delivered on April 27, 1998 and was signed for by a "Michelle Hyman" at attorney Wandro's address.

⁴ The U.S. Postal Service domestic return receipt "Article Number Z 056 687 867" showed that the letter was delivered on May 18, 1998 and was signed for by a "Megan Claypool" at attorney Wandro's address.

⁵ This request was sent via Federal Express Airbill Package Tracking Number 4670688374. Federal Express reported the package was delivered on July 15, 1998 and was signed for by a "S. Lyons" at attorney Wandro's address.

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advising him that the NGFA had not received the signed arbitration contract nor the arbitration service fee. Another copy of the arbitration contract was enclosed. Again, neither the defendant's counsel nor the defendant replied.

Pattison's motion for a default judgment included an affidavit attesting to the accuracy of the invoices and contract documents submitted in support of its motion. Each of the grain contracts provided on the front, as follows: "THIS CONTRACT IS SUBJECT TO THE RULES OF THE NATIONAL GRAIN AND FEED ASSOCIATION." [Emphasis in original language.] Each of the grain contracts also contained a written signature appearing to be that of a Clifford Medberry, on behalf of Medberry Farms. Likewise, each of the grain contracts contained the following language in an item number 1:

"The parties to this contract agree that the sole remedy for resolution of any and all disagreements or disputes arising under this contract shall be through arbitration proceedings before the National Grain and Feed Association (NGFA) under NGFA Arbitration Rules. The decision and award determined through such arbitration shall be final and binding upon the buyer and seller. Judgment upon the arbitration award may be entered and enforced in any Court having jurisdiction thereof."

Section 3(a)(2) of the NGFA Arbitration Rules provides, among other things, that:

"If the contract in dispute between a member and non-member 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 rules.**" [Emphasis added.]

Pattison was and is a NGFA Active member. Medberry is not a member. Nevertheless, the contractual documents clearly showed that both parties agreed to submit any unresolved disputes to NGFA arbitration under the NGFA Arbitration Rules if an arbitration complaint was filed. Thus, the NGFA had jurisdiction over this case pursuant to Section 3(a)(2) of the NGFA Arbitration Rules.

The documents submitted in support of Pattison's motion for a default judgment also contained copies of correspondence both to and from attorney Wandro regarding Medberry. Thus, it appeared that attorney Wandro had represented Medberry and that Medberry's failure to respond to the notices regarding Pattison's arbitration complaint was intentional.

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 procedural decisions necessary to implement the NGFA Arbitration Rules.

Section 5(d) of the NGFA Arbitration Rules imposes a duty upon 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." Section 5(c) of the NGFA Arbitration Rules imposes an obligation upon each party to pay the appropriate arbitration service fee at the same time.

The defendant failed to comply with the NGFA Arbitration Rules, notwithstanding clear evidence that the defendant was obligated to comply and received notice, through its attorney, of the plaintiff's claims. Thus, it was appropriate to enter the requested award in favor of the plaintiff, Pattison Bros. Mississippi River Terminal Inc., against the defendant, Medberry Farms.

The Award

Therefore, it is ordered that:

▶ Pattison Bros. Mississippi River Terminal Inc. is awarded a judgment against Medberry Farms in the amount of \$50,912.50 for losses set forth in its arbitration complaint and the motion for default judgment, plus the arbitration service fee of \$755 and interest.

▶ Compound interest on the total judgment of \$51,667.50 shall accrue at the statutory rate on judgments applicable in Iowa from April 9, 1998 until paid in full.

Dated: Sept. 18, 1998

National Grain and Feed Association

By: David C. Barrett Jr.
National Secretary