



Arbitration Decision

National Grain and Feed Association

February 12, 1998

Arbitration Case Number 1830

Plaintiff: The Andersons Inc., Maumee, Ohio

Defendant: Don Buckenmeyer, Swanton, Ohio

Findings and Default Judgment

The Andersons Inc., the plaintiff, submitted a request for arbitration to the National Grain and Feed Association (NGFA®) by letter dated May 28, 1997, which was received by the NGFA on June 3, 1997.

The plaintiff alleged that Don Buckenmeyer, 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. 49870, 49871, 56724, 11703, 36676, 36677, 49543, 49544 and 45994) with The Andersons. The Andersons claimed damages in the amount of \$89,565.23 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 July 31, 1997. Likewise, the defendant was notified of The Andersons' arbitration complaint by letter² from the NGFA dated June 3, 1997. The NGFA's June 3 letter was sent to Mr. Don Buckenmeyer via U.S. Postal Service certified mail. The letter was signed for by a "Don Buckenmeyer" (Certified Receipt No. Z 370 603 218) on June 6, 1997.

The Andersons, as required under the NGFA's Arbitration Rules, executed the NGFA Contract for Arbitration and returned it with the arbitration service fee of \$800 by letter dated June 11, 1997. Both were received by the NGFA on June 12, 1997.

Subsequently, the defendant was sent a letter dated June 19, 1997, which requested that he execute the NGFA Contract for Arbitration and pay the arbitration service fee. This letter was signed for by a "Don Buckenmeyer" (Certified Receipt No. Z 370 603 632) on June 26, 1997.

The NGFA on Oct. 31, 1997 sent Mr. Don Buckenmeyer's attorney, Charles Hunt, Esq., a letter via Federal Express requesting that his client sign the NGFA Contract for Arbitration and pay the arbitration service fee. Federal Express records verified that the Oct. 31 letter was delivered³ and signed for by a "M. Baker" on Nov. 3, 1997 (Airbill Tracking Package No. 4670687313). Federal Express is a "recognized overnight delivery service" within the meaning of Section 10 of the NGFA Arbitration Rules.

The NGFA's Oct. 31 correspondence also advised the defendant's attorney that:

"You should note that The Andersons Inc.'s complaint points out that NGFA arbitration on its claims is based on

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 The first two notices were sent to the defendant at the following address: 13423 West Central Avenue, Swanton, OH 43558.

³ The defendant's attorney was served at the following address: 5808 Monroe St., P.O. Box 364, Sylvania, OH 43560.

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the arbitration provisions contained in the contracts entered into with your client. 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 NGFA Contract for Arbitration must be signed by your client and the \$800 arbitration service fee must be submitted. Failure to do so may result in the entry of a default judgment."

The NGFA did not receive a response to its Oct. 31 letter from either the defendant or his attorney.

The plaintiff, by letter dated Jan. 8, 1998 and a corrected letter dated Jan. 12, 1998, requested that the NGFA enter a default judgment against Don Buckenmeyer in the total amount of \$98,347.29. The plaintiff also requested that it be awarded, as costs, the \$800 arbitration service fee that it paid in this case. The plaintiff included with its request copies of the contractual documents at issue and an affidavit verifying the accuracy of the documents and the calculated damages. The defendant did not respond to any of the NGFA's correspondence, notwithstanding the defendant's clear obligation to do so. Specifically, the contracts between the parties provided as follows:

"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 and Feed Association, pursuant to its arbitration rules."

There was no indication that the defendant intended to execute the NGFA Contract for Arbitration; pay the required arbitration service fee, or otherwise comply with the NGFA Arbitration Rules. Section 5(d) of the NGFA Arbitration Rules requires a party to "complete the contract for arbitration within fifteen (15) days from the date the party receives the contract from the National Secretary." The defendant violated the time limits in the rules. Moreover, the defendant clearly received the NGFA's notices and was notified through his attorney that his failure to proceed could result in the entry of a default judgment.

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. The defendant in this case failed to comply with the NGFA Arbitration Rules. Thus, it is appropriate to enter the requested award in favor of the plaintiff, The Andersons Inc., against the defendant, Don Buckenmeyer.

The Award

It therefore is ordered that:

The Andersons Inc. is awarded a judgment against Don Buckenmeyer, itemized as follows:

\$ 6,256.37	Cancellation Invoice No. 10-27749
13,750.00	Cancellation Invoice No. 10-27788
6,950.00	Cancellation Invoice No. 10-27996
21,100.00	Cancellation Invoice No. 510-1650
37,920.36	Cancellation Invoice No. 10-28615
3,169.87	Interest Charges through May 28, 1997
9,200.69	Compound Interest calculated 18 percent from May 29, 1997 to Dec. 31, 1997
800.00	National Grain and Feed Association arbitration service fee
\$99,147.29	Total Default Judgment Award

Compound interest on the judgment amount of \$99,147.29 shall accrue at the rate of 9 percent per annum from Jan. 1, 1998 until paid.

Dated: Jan. 16, 1998.

National Grain and Feed Association

By: Kendell W. Keith
NGFA President/Acting National Secretary