



October 8, 1998

Arbitration Case Number 1904

Plaintiff: Demeter Commodities LP, Juda, Wis.

Defendant: Jeff Trumpy, Brooklyn, Wis.

Factual and Procedural Background

Demeter Commodities LP (Demeter), the plaintiff, submitted a request for arbitration with the National Grain and Feed Association (NGFA®) by letter dated Jan. 28, 1998, which was received by the NGFA on Feb. 2, 1998.

The plaintiff alleged that Jeff Trumpy, the defendant, failed to pay amounts owed to Demeter as a result of cancellation¹ of the defendant-seller's "to-arrive" cash contracts with Demeter. The plaintiff also claimed damages in the amount of \$10,781.25 for market differences between the contract price, replacement cost at the time of cancellation and contract cancellation charges. Likewise, the plaintiff sought reimbursement for attorneys fees in the amount of \$895.89, collection costs and interest at the rate of 9.25 percent per annum.

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 Feb. 13, 1998. Likewise, defendant was notified of Demeter's arbitration complaint by letter² from the NGFA dated Feb. 13, 1998. The NGFA's letter dated Feb. 13, 1998 was sent to Mr. Jeff Trumpy via U.S. Postal Service certified mail. The letter was signed for by a "Teresa Trumpy" (Certified Receipt No. (Z 015 220 948) on Feb. 17, 1998.

As required under the NGFA's Arbitration Rules, Demeter executed the NGFA Contract for Arbitration and returned the executed contract with the arbitration service fee of \$452 Both were received by the NGFA on March 4, 1998.

On March 2, 1998 the NGFA received a letter dated Feb. 24, 1998 from David M. McDorman, attorney for the defendant, stating that he represented the defendant, Jeff Trumpy, with respect to this arbitration matter. The NGFA subsequently sent the defendant's attorney a letter³ dated April 1, 1998, in which he was requested to have his client, Jeff Trumpy, execute the NGFA Contract for Arbitration and pay the arbitration service fee. This letter was signed for by a "J. Gay" (Certified Receipt No. Z 146 468 553) on April 6, 1998.

The defendant's attorney, by letter dated May 7, 1998 addressed to Demeter's attorney (copy received by NGFA on May 11, 1998) stated, among other things, that "Jeff Trumpy would prefer to have these disputes submitted to a Court in a proper venue in the State of Wisconsin...I do not believe that Mr. Trumpy has made any kind of agreement to be bound by Arbitration Rules which were not referenced or otherwise made binding by the terms of this Marketing Contract."

Thereafter, Demeter's attorney sent a letter dated June 8, 1998 that took issue with certain claims made by the defendant's attorney and asking that the NGFA proceed with the arbitration. On June 16, 1998, the NGFA sent another letter to the defendant's attorney requesting to be informed of the defendant's intentions regarding the arbitration. The NGFA did not receive a response to its June 16, 1998 letter from either the defendant or his attorney.

Demeter, by letter dated July 29, 1998, requested that the NGFA enter a default judgment against Jeff Trumpy in the

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 in the parties' contracts.

² The first two notices were sent to the defendant at the following address: RR 1 Box 159, Brooklyn, WI 53521.

total amount of \$13,069.44 (which included compound interest at the rate of 9.25 percent per annum to that date), plus reimbursement for the \$452 arbitration service fee. The plaintiff included with its request copies of the contractual documents at issue and a statement itemizing the damages.

Demeter's complaint, in numbered paragraph 6, clearly put the defendant on notice that the basis for its claim of NGFA arbitration jurisdiction was based upon the express terms of the

parties' "Advance Marketing Contract," each of which (Demeter contract numbers 38-0288 and 38-0289) contained the following language near the top of the first page:

"We hereby confirm purchase from you today, subject to NATIONAL GRAIN & FEED ASSOCIATION Trade Rules."

In addition, each of the initial contracts contained a signature on the first page purporting to be that of a "Jeffrey Trumpy."

Jurisdiction

The defendant, Jeff Trumpy, clearly received notice of the arbitration complaint filed against him. In addition, the defendant was represented by counsel. Therefore, it appeared that the defendant had made a conscious decision not to proceed with NGFA arbitration.

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 documents submitted by the plaintiff showed on their face that the parties agreed to be bound by the NGFA Trade Rules. Since the contracts involved corn, the following provisions of the NGFA Grain Trade Rules were relevant to the transactions:

"Rule 42. Arbitration:

(a) Where differences between members of this Association cannot be amicably adjusted, said differences shall, at the request of either party, be submitted to the NGFA Arbitration Committee.

(b) The decision of an Arbitration Committee of this Association shall be final except as provided in Section 9 of the Arbitration Rules."

Contractual provisions incorporating the NGFA Trade Rules into a contract have been found to bind parties to NGFA arbitration pursuant to NGFA Grain Trade Rule 42, even where one party is not a member of the association. *See, e.g., Hodge Brothers, Inc. v. The DeLong Co., Inc.*, 942 F. Supp. 412 (W.D. Wis. 1996). That also is the situation here⁴.

Default Judgment

There is 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 clearly violated the time limits in the rules. Moreover, the defendant clearly received the NGFA's notices.

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 was appropriate to enter the requested award in favor of the plaintiff, Demeter Commodities LP, against the defendant, Jeff Trumpy.

The Award

Therefore, it is ordered that:

Demeter Commodities LP is awarded a judgment⁵ against Jeff Trumpy, itemized as follows:

\$10,781.25	Cancellation Costs
895.89	Counsel Fees
1,392.30	Compound Interest calculated 9.25 percent from March 6, 1997 to July 29, 1998
452.00	NGFA Arbitration Service Fee
\$13,521.44	Total Default Judgment Award as of July 29, 1998

Compound interest on the judgment amount of \$13,521.44 shall accrue at the rate of 9.25 percent per annum from July 29, 1998 until paid.

Dated: Sept. 24, 1998.

National Grain and Feed Association

By: David C. Barrett Jr.
National Secretary

³ The notice was sent to the following address: One Landmark Place, Suite 302, 2901 West Beltline Hwy., Madison, WI 53713

⁴ Demeter is a NGFA Active member. Jeff Trumpy is not a NGFA member.

⁵ Defendant's attorney was notified by letter dated Sept. 16, 1998 that "the National Secretary intends to grant the judgment against your client unless good cause is shown otherwise by noon (Eastern Time) on Sept. 24, 1998." A copy of this (at that time) proposed decision was enclosed with that letter.