



# Arbitration Decision

National Grain and Feed Association

October 8, 1998

## Arbitration Case Number 1918

**Plaintiff: Southern Thumb Co-op Inc., Frankenmuth, Mich.**

**Defendant: Ida Kethe, Lenox, Mich.**

### Findings and Default Judgment

Southern Thumb Co-op Inc. (Southern Thumb), the plaintiff, requested the entry of a default judgment in the amount of \$153,825.35 against Ida Kethe (Kethe), the defendant. The judgment was granted for the reasons set forth below.

Southern Thumb filed its arbitration complaint pursuant to a letter dated Dec. 23, 1997, which was received by the National Grain and Feed Association (NGFA) on Dec. 29, 1997. Southern Thumb's arbitration complaint alleged, among other things, that Kethe had breached several hedge-to-arrive grain contracts.<sup>1</sup> Southern Thumb's arbitration complaint also clearly stated that each of the contracts contained provisions referencing the NGFA Trade Rules, which required the parties to submit unresolved disputes to NGFA arbitration. Likewise, Southern Thumb indicated that the contracts either were signed by Kethe or were delivered to her as written confirmation of an oral contract between merchants, and were received without objection.

Acting upon Southern Thumb's complaint, the NGFA prepared a National Grain and Feed Association Contract for Arbitration and sent it to Southern Thumb for execution by letter dated Feb. 27, 1998. The NGFA's records also showed that Kethe, the defendant, was sent initial notice<sup>2</sup> of Southern Thumb's complaint by letter dated Feb. 27, 1998 via U.S. Postal Service certified mail.

As required by the NGFA Arbitration Rules, Southern Thumb on March 10, 1998 executed the National Grain and Feed Association Contract for Arbitration and returned the executed contract with the arbitration service fee of \$1,585 to the NGFA.

The NGFA then sent the defendant a letter<sup>3</sup> dated May 4, 1998 via U.S. Postal Service certified mail, which requested execution of the National Grain and Feed Association Contract for Arbitration, as well as payment of the arbitration

<sup>1</sup> Contract number 6955, together with its related contract numbers 757 and 40571; contract number 7810, together with its related contract numbers 54217 and 40571; contract number 7830, together with its related contract numbers 20597 and 40571, contract number 7847, together with its related contract numbers 20133, 21230 and 40571; contract number 7848, together with its related contract numbers 20134, 21231 and 40571; contract number 50679, together with its related contract numbers, 20484 and 40571; contract number 50878, together with its related contract numbers 20588 and 54216; contract number 21263, together with its related contract number 52550; contract number 52743, together with its related contract numbers 21230, 7847, 40571; contract number 52756, together with its related contract numbers, 21229, 1090 and 40571; contract number 52757, together with its related contract numbers, 21231, 7848, 20134, and 40571; contract number 21434, together with its related contract number 52803; contract number 52928, together with its related contract numbers, 20597, 7830 and 40571; contract number 53301, together with its related contract number 40148; contract number 53569, together with its related contract numbers, 41692 and 40148; contract number 53806, together with its related contract numbers, 52849, 20484, 50679 and 40571; contract number 54204, together with its related contract numbers, 52853 and 20507; contract number 54215, contract number 54216, together with its related contract numbers 50878 and 20588; contract number 54217, together with its related contract number 7810; and contract number 54218, together with its related contract number, 50714.

<sup>2</sup> Notices to the defendant were sent to: Ida Kethe, 35855 30 Mile Run Rd., Lenox, MI, 48050; The U.S. Postal Service domestic return receipt "Article Number Z 015 225 207" showed that it was signed for by an "Ida Kethe" on March 6, 1998.

<sup>3</sup> The U.S. Postal Service domestic return receipt "Article Number Z 056 686 522" showed that the defendant refused the letter on the first notice. Ultimately, the U.S. Postal Service returned the letter to the NGFA marked "refused."

service fee of \$1,585. Thereafter, the NGFA sent a letter dated May 29, 1998 to the defendant via Federal Express.<sup>4</sup> Once again, the NGFA requested that the defendant execute the arbitration contract and pay the required arbitration service fee. Past attempts to contact the defendant were outlined in the letter. Federal Express reported that the package and contents were delivered to the defendant's address on June 2, 1998 and were signed for by an "I. Kethe." However, the defendant failed to respond to the May 29, 1998 letter.

Southern Thumb filed its initial request for a default judgment on Aug. 7, 1998, and subsequently supplemented its request with copies of the grain contracts at issue in this case. Each of the contracts contained one of the following provisions as part of numbered item 5:

"THIS TRADE IS MADE UNDER THE TRADE RULES OF THE NATIONAL GRAIN & FEED ASSOCIATION GOVERNING TRANSACTIONS IN GRAIN, EXCEPT AS MODIFIED HEREIN, AND BOTH PARTIES AGREE TO BE BOUND THEREBY."

OR

"THIS TRADE IS MADE UNDER THE TRADE RULES OF THE NATIONAL GRAIN & FEED ASSOCIATION GOVERNING TRANSACTIONS IN GRAIN, EXCEPT AS MODIFIED HEREIN, AND BOTH PARTIES AGREE TO BE BOUND THEREBY. IF A DISPUTE ARISES THAT CANNOT BE SETTLED BETWEEN THE PARTIES TO THIS CONTRACT, BOTH PARTIES THEN AGREE TO ARBITRATE UNDER AND BE BOUND BY THE DECISION OF THE NATIONAL GRAIN & FEED ASSOCIATION ARBITRATION PROCEDURE."

A review of the plaintiff's complaint, request for default judgment and the contractual documents showed that the defendant agreed to be bound by the NGFA Trade Rules.<sup>5</sup> NGFA Grain Trade Rule 42 provides that disputes shall be submitted to NGFA arbitration. Contractual language referencing the NGFA Trade Rules has been found to bind parties to arbitration 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).

Southern Thumb was and is a NGFA Active member. Kethe is not a member. Nevertheless, the contractual documents clearly show that both parties agreed to submit any unresolved disputes to NGFA arbitration under the NGFA Arbitration Rules should an arbitration complaint be filed. Thus, the NGFA has jurisdiction over this case pursuant to Section 3(a)(2) of the NGFA Arbitration Rules, which provide, 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.]"

The NGFA's records showed that the defendant actually received notice of the claims asserted against her by Southern Thumb. Thus, it appeared that Kethe's failure to respond to the notices regarding Southern Thumb'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 such procedural decisions as are 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 National Grain and Feed Association 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 on 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 she was obligated to comply and received notice of the plaintiff's claims. Therefore, it was appropriate to enter the requested award in favor of the plaintiff, Southern Thumb Co-op Inc., against the defendant, Ida Kethe.

## The Award

Therefore, it is ordered that:

Southern Thumb Co-op, Inc. is awarded a judgment against Ida Kethe in the amount of \$153,825.35 for losses set forth in plaintiff's arbitration complaint and the request for default judgment. The plaintiff also is granted an award of costs of \$1,585 for the arbitration service fee paid in this case. Compound interest on the total judgment of \$155,410.35 shall

accrue at the statutory rate on judgments applicable in Michigan from Dec. 23, 1997 until paid in full.

Dated: Sept. 21, 1998

National Grain and Feed Association

By: David C. Barrett, Jr.  
National Secretary

<sup>4</sup> Federal Express is a recognized overnight delivery service pursuant to Section 10(c) of the NGFA Arbitration Rules.

<sup>5</sup> The plaintiff represented in its submission dated Aug. 28, 1998 that "[a]ll of the enclosed contracts and their modifications were either signed by Ida Kethe, her authorized agent, Ron Kethe, or were mailed to Ida Kethe as confirmation of a contract modification and were received without her objection."