



# National Grain and Feed Association Arbitration Decision

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Aug. 10, 2000

## Arbitration Case Number 1961

**Plaintiff: Cargill Inc., Minneapolis, Minn.**

**Defendant: Sohn Dairy, aka Sohn Dairy Inc., Blue Earth, Minn.**

### Factual and Procedural Background

Cargill Inc. (Cargill), the plaintiff, requested entry of a default judgment in the amount of \$157,250 against Sohn Dairy, the defendant.

The judgment was granted for the reasons set forth below.

Cargill filed its initial arbitration complaint pursuant to a letter dated June 29, 1998, received by the National Grain and Feed Association (NGFA) on June 30, 1998. Cargill's arbitration complaint alleged, among other things, that Sohn Dairy had defaulted on or repudiated 17 "No Basis Established" (NBE) contracts. Those contracts<sup>1</sup>, according to Cargill's allegations, obligated the defendant to deliver to Cargill a total of 170,000 bushels of U.S. No. 2 yellow corn. Cargill also represented that each contract contained terms providing for resolution of all disputes pursuant to NGFA arbitration.

Acting upon Cargill's complaint, the NGFA prepared a *National Grain and Feed Association Contract for Arbitration* and sent it to Cargill for execution. The NGFA's records also showed that defendant Sohn Dairy was sent initial notice, and a copy, of Cargill's complaint by letter dated July 6, 1998 via U.S. certified mail<sup>2</sup>. The U.S. Postal Service domestic

return receipt showed that Sohn Dairy received the letter<sup>3</sup> on July 13, 1998.

As required by the NGFA Arbitration Rules, Cargill executed the contract for arbitration and returned it to the NGFA with the \$1,593 arbitration service fee, both of which were received on or about July 21, 1998.

The NGFA then sent a letter dated July 27, 1998 to the defendant via U.S. Postal Service certified mail<sup>4</sup> that requested execution of the contract for arbitration and payment of the arbitration service fee. The U.S. Postal Service domestic return receipt showed that Sohn Dairy received the letter<sup>5</sup> on July 30, 1998.

Subsequently, apparently due to the lack of response by Sohn Dairy, Cargill petitioned a Minnesota state court for an order<sup>6</sup> compelling arbitration. The court found that the parties' contracts contained arbitration clauses, that the disputes "arise from contracts involving interstate commerce" and that the Federal Arbitration Act required arbitration of the parties' disputes. In addition, the court specifically ordered that "[i]f Sohn Dairy refuses to arbitrate before the NGFA, Cargill may seek a default arbitration order from the NGFA."

<sup>1</sup> Cargill contract numbers 65155, 65156, 65157, 65158, 65159, 65160, 65161, 65162, 65163, 65164, 65165, 65167, 65337, 65338, 65474, 65790 and 66052.

<sup>2</sup> U.S. Postal Service article number Z 092 304 249.

<sup>3</sup> Sohn Dairy, Route 3, Box 39, Blue Earth, MN 56013. A "Tom Sohn" signed for the letter.

<sup>4</sup> U.S. Postal Service Article No. Z 050 040 178.

<sup>5</sup> A person with the last name of "Sohn" signed for the letter.

<sup>6</sup> *Cargill Incorporated v. Sohn Dairy Inc.*, No. C9-99-443 (Minn. Fifth Judicial District, Faribault County).

## The Decision

The defendant clearly received notice of the arbitration complaint filed against it. Nevertheless, the defendant failed to respond to the notices sent to it by NGFA. Further, the defendant opposed Cargill's request for a court order compelling arbitration, but then failed to return the contract for arbitration or the arbitration service fee when it was ordered by the court to proceed with arbitration. Thus, it appeared that the defendant made a conscious decision not to proceed with NGFA arbitration.

Cargill was and is a NGFA Active member in good standing. 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."

Thus, the language in the parties' contracts bound both parties to arbitrate this matter under the NGFA Arbitration Rules, even though the defendant was not a member. A

Minnesota state court already reached the same conclusion.

There was no indication that the defendant intended to execute the contract for arbitration, pay the required arbitration service fee, or otherwise comply with the NGFA Arbitration Rules. Section 5 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<sup>7</sup>. Moreover, the defendant clearly received the NGFA's notices.

Section 1 of the NGFA Arbitration Rules provides that the "National Secretary shall have the authority to make such decisions as are necessary to carry out these Rules." Section 5(e) of the NGFA Arbitration Rules expressly authorizes the entry of default judgments where a party "fails to pay the arbitration service fee and/or fails to execute the contract for arbitration." The defendant in this case has failed to comply with the NGFA Arbitration Rules. Thus, it was appropriate to enter the requested award in favor of the plaintiff, Cargill Inc., and against the defendant, Sohn Dairy.

## The Award

Therefore, it is ordered that:

- ▶ Cargill Inc. is awarded a judgment against Sohn Dairy, *aka* Sohn Dairy, Inc., in the amount of \$157,250.
- ▶ Compound interest on the judgment shall accrue at the highest statutory rate on judgments applicable in Minnesota from June 29, 1998, until all sums are paid in full.

Dated: Aug. 2, 2000

National Grain and Feed Association

By: David C. Barrett Jr.  
National Secretary

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<sup>7</sup> The court order also provided that "[i]f NGFA has procedures for a default proceeding they should be followed; if the NGFA has no such procedures, the NGFA may enter default judgment if respondent refuses to sign the NGFA agreement and pay the applicable arbitration fee within (30) days from the date of this Order." Sohn failed to comply with either time period.