



Arbitration Decision

National Grain and Feed Association

February 25, 1999

Arbitration Case Number 1963

Plaintiff: Alternative Feedstuffs, Onalaska, Wis.

Defendant: Keith Duescher, d/b/a Duescher Legendary Farms, Algoma, Wis.

Factual and Procedural Background

Alternative Feedstuffs, the plaintiff, submitted a request for arbitration with the National Grain and Feed Association in a letter dated July 15, 1998, which was received on July 17, 1998. The plaintiff alleged that Keith Duescher, d/b/a Duescher Legendary Farms, the defendant, failed to pay amounts owed to Alternative Feedstuffs for delivery of 15 loads of corn gluten¹. The plaintiff claimed damages in the amount of \$7,637.50 for the alleged breach of contract.

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 24, 1998. Likewise, the defendant was notified of Alternative Feedstuff's arbitration complaint by letter² from the NGFA dated July 24, 1998 that was sent to Mr. Keith Duescher via U.S. Postal Service certified mail. The letter was signed for by a "Keith Duescher" (Certified Receipt No. Z 050 040 183) on July 30, 1998.

As required by the NGFA Arbitration Rules, Alternative Feedstuffs executed and returned the contract for arbitration, accompanied by an arbitration service fee of \$376, which were received by the NGFA on Aug. 21, 1998. The NGFA then sent the defendant a letter dated Sept. 24, 1998, requesting that he execute the contract for arbitration and pay the arbitration

service fee. This letter was signed for by a "Terri Duescher" (Certified Receipt No. Z 523 477 655) on Sept. 28, 1998.

Alternative Feedstuffs, by letter dated Dec. 22, 1998, requested that the NGFA enter a default judgment against the defendant in the total amount of \$8,830.82 (which included compound interest at the rate of 18 percent per annum to that date, plus reimbursement of the \$376 arbitration service fee). The plaintiff included with its request copies of the contractual documents at issue in the case, as well as a statement itemizing the damages.

A review of the documents submitted by Alternative Feedstuffs showed the following:

- ▶ The "Sales Confirmation and Contract" on the first page provided "Rules to Govern: NFGA (sic)."
- ▶ The "Sales Confirmation and Contract" on the first page provided that "[r]eceipt of this contract by the Buyer, without written notice to us of objection or error with in (sic) seven days is an acknowledgment of the acceptance of all conditions hereof." Also, on the first page, the contractual document stated: "[p]lease check carefully and notify Alternative Feedstuffs immediately if any

¹ The contract confirmation showed a sale by the plaintiff to the defendant on Sept. 16, 1997 of: 15 loads (approximately 352.5 tons) of corn gluten pellets at a price of \$103.50 per ton; scheduled shipment date of October 1997 through March 1998; F.O.B. delivered on a hopper bottom trailer; payment terms of "Net 10."

² All notices were sent to the defendant at the following address: N. 6388 Longfellow Road, Algoma, WI 54211.

³ Alternative Feedstuffs' "Contract Number: SS00628."

© Copyright 1999 by National Grain and Feed Association. All rights reserved. Federal copyright law prohibits unauthorized reproduction or transmission by any means, electronic or mechanical, without prior written permission from the publisher, and imposes fines of up to \$25,000 for violations.

corrections are necessary, otherwise this contract will be in full force and effect as written."

◆ The "Sales Contract and Confirmation" provided on the second page that, "[t]his contract unless otherwise noted herein, shall be subject to the trading rules of the national association applicable to the commodity or commodities covered by this contract."

◆ The "Sales Contract and Confirmation" provided on the second page that "Buyer and Seller hereby agree to settle disputes or differences that may arise under this contract through arbitration under the rules of the National Feed and Grain Association (sic) or any other similarly recognized association under whose trading rules this transaction would be covered."

Jurisdiction

The defendant, Keith Duescher, d/b/a Duescher Legendary Farms, clearly received notice of the arbitration complaint filed against him. Thus, it appeared that the defendant 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 plaintiff submitted a notarized statement attesting to the authenticity of the allegations, documents and damages. The plaintiff's notarized statement included verification that the contract confirmation was sent to the defendant on the date of the transaction.

Unquestionably, the contractual documents provided for arbitration. Likewise, the reference to applicable trade rules showed an intent for the transaction to be governed by the NGFA Feed Trade Rules, since corn gluten is a feedstuff within the meaning of the rules. Contractual provisions incorporating the NGFA Trade Rules into a contract have been

found to bind parties to NGFA 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)]. That also was the situation in this case⁴.

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 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 procedural decisions necessary to implement the provisions of the NGFA Arbitration Rules. The defendant failed to comply with the NGFA Arbitration Rules. Thus, it was appropriate to enter the requested award in favor of the plaintiff, Alternative Feedstuffs, against the defendant, Keith Duescher, d/b/a Duescher Legendary Farms.

Default Judgment

Therefore, it is ordered that:

Alternative Feedstuffs is awarded a judgment against Keith Duescher, d/b/a Duescher Legendary Farms, itemized as follows:

\$7,637.50	Contract Default Damages
+	
<u>376.00</u>	NGFA arbitration service fee
\$8,013.50	Total Default Judgment Award

Compound interest on the judgment amount of \$8,013.50 shall accrue at the rate of 18 percent per annum from July 15, 1998⁵ until paid in full.

Dated: Feb. 9, 1999.

National Grain and Feed Association

By: David C. Barrett Jr.
National Secretary

⁴ *Alternative Feedstuffs* is a NGFA Active member. *Keith Duescher* is not a NGFA member. NGFA Feed Trade Rule 24 provides for arbitration of disputes, as does NGFA Grain Trade Rule 42.

⁵ July 15, 1998 was the date of the plaintiff's arbitration complaint.