



National Grain and Feed Association Arbitration Decision

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December 14, 2000

Arbitration Case Number 1995

Plaintiff: Matawan Grain & Feed Inc., New Richland, Minn.

Defendant: Andy Lorence Co., Minneapolis, Minn.

Factual and Procedural Background

Matawan Grain and Feed (Matawan), the plaintiff, requested the entry of a default judgment in the amount of \$112,678.42, plus interest, against Andy Lorence Co., the defendant.

The judgment was granted for the reasons set forth below.

Matawan filed its arbitration complaint pursuant to a letter dated July 26, 2000, which was received by the National Grain and Feed Association (NGFA) on July 27, 2000. Matawan's arbitration complaint alleged, among other things, that Andy Lorence Co. had failed to pay for 85,000 bushels of corn shipped on contracts¹ entered into between the parties. Each contract provided on the first page under "Special Instructions/Remarks" that it was "[s]ubject to the Rules of the National Grain and Feed Association." While Matawan was not a NGFA member, Andy Lorence Co. was a NGFA Active member in good standing at the time each contract was executed.

Acting upon Matawan's complaint, the NGFA prepared a contract for arbitration and sent it to Matawan for execution. The NGFA's records also showed that defendant Andy Lorence Co. was sent initial notice and a copy of Matawan's complaint on Aug. 1, 2000 via Certified Mail.

Matawan, as required by the NGFA Arbitration Rules, executed the contract for arbitration and returned it with the

arbitration service fee of \$1,113, both of which were received by the NGFA on Aug. 10, 2000.

Subsequently, the NGFA sent a letter – dated Aug. 11 – via Federal Express² to defendant Andy Lorence Co., requesting execution of the contract for arbitration and payment of the arbitration service fee. The NGFA's letter contained the following paragraph:

"FAILURE TO COMPLY WITH THE NGFA ARBITRATION RULES AND/OR FAILURE TO FILE ANY RESPONSIVE STATEMENT WITH THE NATIONAL SECRETARY MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU, WHICH THE PLAINTIFF MAY ENFORCE IN A COURT OF LAW. FAILURE TO RESPOND TO THIS NOTICE AND PLAINTIFF'S CLAIM MAY AFFECT YOUR LEGAL RIGHTS." [Emphasis in original.]

The NGFA's Aug. 11 letter to Andy Lorence Co. was verified as delivered on Aug. 17, 2000. Andy Lorence Co. failed to return an executed copy of the contract for arbitration or the required arbitration service fee.

Matawan has submitted copies of the contracts between the parties, along with copies of other records showing shipments of oats to Andy Lorence Co.

¹A copy of the contracts, numbered 1846 and 1872, submitted by Matawan showed shipment periods of July 15-31, 1999 and July 23-31, 1999, respectively.

²Federal Express tracking number 818905685716.

The Decision

The defendant clearly received notice of the arbitration complaint filed against it. Thus, it appeared that the defendant made a conscious decision not to proceed with NGFA arbitration.

Andy Lorence Co. was an Active NGFA member in good standing at the time the contracts were executed. Section 3(a)(2) of the NGFA Arbitration Rules expressly provides, among other things, as follows: *"If 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."* Further, Section 3(c)(4) of the NGFA Arbitration Rules provides that: *"A general reference to NGFA rules shall be deemed to incorporate all rules of this Association including the... Trade Rules and Arbitration Rules, and all definitions included in the Trade Rules shall apply under these Arbitration Rules, likewise."*

Therefore, the language in the parties' contracts bound both parties to arbitrate this matter under the NGFA Arbitra-

tion Rules, even though the plaintiff was not a NGFA member.

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 clearly violated the time limits in the rules. Moreover, the defendant 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 failed to comply with the NGFA Arbitration Rules. Thus, it was appropriate to enter the requested award in favor of the plaintiff, Matawan Feed and Grain, and against the defendant, Andy Lorence Co.

The Award

Therefore, it is ordered that:

- ▶ Matawan Grain and Feed is awarded a judgment against Andy Lorence Co. in the amount of \$112,678.42.
- ▶ Compound interest on the judgment shall accrue at the highest statutory rate on judgments applicable in the state of Minnesota from July 31, 2000 until paid in full.

Dated: Oct. 10, 2000

National Grain and Feed Association

By: **Matthew W. Lisle**
National Secretary