

August 26, 1999



## Arbitration Case Number 1777

**Plaintiff:** The Andersons Inc., Maumee, Ohio

**Defendants:** Steve Rose, Steve Rose d.b.a. Grass Lake Grain, Grass Lake Grain Inc., and Bacon Acres Inc. d.b.a. Grass Lake Grain, Manchester, Mich.

### Statement of the Case

This case involved claims asserted by The Andersons Inc., the plaintiff-buyer, arising from nine cash grain contracts<sup>1</sup> with the defendant-sellers, Steve Rose, Steve Rose d/b/a Grass Lake Grain, Grass Lake Grain Inc., and Bacon Acres Inc. d/b/a Grass Lake Grain (collectively referred to as "Rose"). The arbitration was conducted pursuant to a court order issued by a Michigan federal district court<sup>2</sup>.

The forward contracts (including hedge-to-arrive contracts) were entered into between Dec. 1, 1994 and Oct. 26, 1995. Under the contracts, Rose was obligated to make deliveries between October 1995 and August 1996. The dispute arose from Rose's failure to deliver on the contracts and Andersons' subsequent cancellation of the contracts. Andersons claimed damages of \$223,325.44, plus interest at the rate of 18 percent per annum, costs of collection and attorney fees of \$24,238.50. The attorney fees were incurred as a result of Andersons' federal court suit to compel Rose to proceed with NGFA arbitration based upon arbitration provisions<sup>3</sup> contained in the contracts.

The parties had an ongoing business relationship, and there was no dispute regarding the formation of the contracts. Steve Rose owned and operated a grain and hog farming operation. In addition, he operated a small grain elevator, where he bought

grain from local farmers. Andersons stated that it followed Steve Rose's instructions as to the allocation of contracts to various entities operated by Steve Rose.

All contracts were written with a specified delivery period, and Rose delivered on a portion of some of the contracts. Once it was determined that Rose was unable to meet his contractual obligations, Andersons canceled the balance of the contracts in question by following the provisions of NGFA Grain Trade Rule 10.

Rose asserted "that there are disputes and claims over which this tribunal does not have jurisdiction and upon which it cannot grant relief." Rose also contended that "this tribunal is not objective or disinterested and that it is unlikely that they can receive a fair and impartial hearing." While Rose did not dispute the cancellation process or prices, he did claim that the contracts should not be enforced because he did not understand the contracts when he entered into them, and that they were illegal hedge-to-arrive contracts. Rose also asserted an offset of \$18,524.84 against Andersons on contract number 19863 related to the delivery of soybeans against that contract. Finally, Rose raised issues regarding the liability of various entities named as defendants in this case.

<sup>1</sup> Andersons' Contract Numbers 15460, 15461, 16975, 19863, 20924, 20973, 15487, 17720, and 17722.

<sup>2</sup> *The Andersons Inc. v. Steve Rose, et al.*, Case No. 1:97-CV-632 (W.D. Mich. July 7, 1998) (order granting summary judgment on motion to compel NGFA arbitration). Andersons' initial arbitration complaint was filed with the NGFA by letter dated Aug. 14, 1996.

<sup>3</sup> *The Andersons Inc.* was and is a NGFA Active member. The defendants were and are not NGFA members.

## The Decision

The arbitrators first concluded that this case was properly before the NGFA Arbitration System based upon the order<sup>4</sup> issued by U.S. District Judge David W. McKeague and the parties' contracts. Each of the contracts between the parties contained an arbitration clause providing that "any disputes or controversies arising out of this contract shall be arbitrated by the National Grain and Feed Association, pursuant to its arbitration rules." The contracts also contained a provision referencing the NGFA Grain Trade Rules. Thus, the arbitrators concluded that jurisdiction in this case existed under Section 3(a)(2) of the NGFA Arbitration Rules.

Next, the arbitrators concluded that the contracts at issue were valid cash-forward grain contracts. The evidence showed that Rose acknowledged the open contractual obligations and agreed to cancel the contracts on Jan. 2, 1996. The contracts canceled included:

tions when the contracts were initially made. Thus, the contracts were binding upon the parties pursuant to both NGFA Grain Trade Rule 6 and general commercial law governing merchants.

The arbitrators concluded that the evidence presented showed that Steve Rose (a.k.a. Steven G. Rose) was liable to Andersons Inc. on each of the contracts. The arbitrators also concluded that Grass Lake Grain was an entity synonymous with Steve Rose under the ongoing trading relationship described in the evidence submitted in this case. The evidence showed that Grass Lake Grain had issued warehouse receipts to Andersons under a Michigan warehouse license. Checks also had been issued to Andersons by Grass Lake Grain and were signed by Steve Rose without any indication of a separate corporate identity for Grass Lake Grain. The evidence also showed that "Bacon Acres Inc." had issued checks to Andersons

Contract	Delivery	Type	Comm.	Qty.	Ct. Price	Shipments	Bu. Canceled	Price	Amount
15487	Mar-96	HTA	YC	25,000	2.5575	0	25,000	3.7475	\$ 29,750.00
17720	Nov-95	Cash	YC	70,000	2.925	36,146.91	33,853.09	3.41	\$ 16,418.75
17722	Nov-95	Cash	YC	10,000	2.925	0	10,000	3.41	\$ 4,850.00
15460	Mar-96	HTA	YC	80,000	2.5175	0	80,000	3.7475	\$ 98,400.00
15461	Dec-96	HTA	YC	20,000	2.5175	0	20,000	3.7475	\$ 24,600.00
16975	Dec-95	HTA	YC	50,000	2.89	0	50,000	3.7475	\$ 42,875.00
19863	O/N 95	Cash	YS	5,000	6.00	3,087.64	1,912.36	7.35	\$ 2,581.69
20973	O/N 95	Cash	YS	2,000	6.40	0	2,000	7.35	\$ 1,900.00
20924	J/A 96	Cash	RW	5,000	4.08	0	5,000	4.47	\$ 1,950.00
<b>Total</b>									<b>\$ 223,325.44</b>

The parties disagreed over the actual or potential liability on the contracts of the various entities connected to Steve Rose. Contract number 15487 referenced "Grass Lake Grain" at the top of the first page, but referenced "Steve" [typed in] at the bottom. Contract numbers 17720 and 17722 referenced "Grass Lake Grain" at the top of the first page and "Steve Rose" at the bottom. Contract numbers 15460, 16975, 15461, 19863 and 20924 referenced "Steven G. Rose" at the top of the first page and "Steve Rose" at the bottom. Contract number 20973 referenced "Steven G. Rose" at the top of the first page and "Steve Brown" at the bottom. One contract merely mentioned "Steve" at the bottom. Some of the contracts bore a signature, while others did not. There was no evidence submitted in this case that indicated that Steve Rose or any of the related entities objected to any of the contract confirma-

related to Grass Lake Grain obligations. Thus, the arbitrators concluded that Grass Lake Grain also was a name under which Bacon Acres Inc. did business.

The arbitrators concluded that Andersons was entitled to prevail on its claims of \$223,325.44 resulting from cancellation of the open contract balances. However, the arbitrators also concluded that Rose was entitled to a credit of \$18,525.84 for delivery of soybeans against contract number 19863. Thus, the net amount due Andersons on claims arising from the contract cancellations was \$204,799.60.

The arbitrators agreed that Andersons was entitled to attorney fees attributable to the federal court suit to compel arbitration, since each of the contracts contained the following provision:

<sup>4</sup> The arbitrators also noted that the court order contained a stipulation signed by the defendants' attorney indicating that it was "APPROVED AS TO FORM AND SUBSTANCE."

*“Failure to fulfill this contract will result in minimum contract cancellation charges....Seller shall also be liable for The Andersons’ attorney fees, costs of collection, plus interest.”*

The arbitrators concluded that the clear arbitration provision, combined with the equally clear contractual provision on the issue of attorney fees, justified an award of attorney fees to Andersons in the amount of \$24,238.50.

Therefore, the arbitrators concluded that Andersons was due \$229,038.10, plus compound interest at a rate of 9.75 percent per annum, as outlined in the award set forth below.

All of the claims of the parties were thoroughly reviewed and considered by the arbitrators, even if not addressed expressly in this written decision. Thus, this decision is intended to resolve all issues between the parties on the transactions at issue in this case.

## The Award

Therefore, it is ordered, adjudged and decreed that:

- ▶ The Andersons Inc. is awarded a judgment against Steve Rose (a.k.a. Steven G. Rose, Grass Lake Grain Inc., Grass Lake Grain and Bacon Acres Inc.) in the amount of \$51,018.75, plus compound interest at the rate of 9.75 percent from Jan. 2, 1996 until paid in full. This judgment represents the claims asserted by The Andersons Inc. on contract numbers 15487, 17720 and 17722. The full amount of the judgment shall be considered a joint and several liability of these defendants;
  
- ▶ The Andersons Inc. is awarded a judgment against Steve Rose (a.k.a. Steven G. Rose) in the amount of \$153,780.85, plus compound interest at the rate of 9.75 percent per annum from Jan. 2, 1996 until paid in full. This judgment represents the claims asserted by The Andersons Inc. on contract numbers 15460, 15461, 16975, 19863, 20924 and 20973 (with a credit offset of \$18,525.84 to the defendant); and

- ▶ The Andersons Inc. is awarded a judgment against Steve Rose (a.k.a. Steven G. Rose, Grass Lake Grain, Inc., Grass Lake Grain and Bacon Acres, Inc.) in the amount of \$24,238.50 for attorney fees, plus interest at the rate of 9.75 percent per annum from June 30, 1998 until paid in full. The full amount of the judgment shall be considered a joint and several liability as to these defendants.

Submitted with the concurrence and unanimous consent of the arbitrators, whose names are listed below:

**Fran Malecha**, *Chairman*  
Marketing Manager, Commodities  
General Mills Inc.  
Great Falls, Mont.

**Gene Legg**  
General Manager  
Dumas Co-op Elevators  
Dumas, Texas

**Gary Peintner**  
Manager  
Amherst Co-op Elevator Inc.  
Amherst, Colo.