



Arbitration Decision

October 22, 1998

Arbitration Case Number 1922

Plaintiff: Southern Thumb Co-op Inc., Frankenmuth, Mich.
Defendant: Nicholas Marinich, Yale, Mich.

Note: On Feb. 17, 2004, the Defendant produced to the NGFA a notice filed by the Plaintiff in state court dismissing a Complaint for Judgement on Arbitration Award based upon settlement by the parties. (Copy Attached)

Findings and Default Judgment

Southern Thumb Co-op Inc. (Southern Thumb), the plaintiff, requested the entry of a default judgment in the amount of \$23,625 against Nicholas Marinich (Marinich), the defendant. The judgment was granted for the reasons set forth in this decision.

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 Marinich breached a hedge-to-arrive grain contract.¹ Southern Thumb's arbitration complaint also stated that the contract contained provisions referencing the NGFA Trade Rules, which required the parties to submit unresolved disputes to NGFA arbitration. Likewise, Southern Thumb indicated that the contract and its related contracts either were signed by Marinich or were delivered to him 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 March 2, 1998. The NGFA's records showed that Marinich, the defendant, was sent initial notice of Southern

Thumb's complaint by letter dated March 2, 1998 via U.S. Postal Service certified mail².

As required by the NGFA's Arbitration Rules, Southern Thumb executed the National Grain and Feed Association Contract for Arbitration and returned the executed contract with the arbitration service fee of \$618 to the NGFA.

The NGFA then sent a letter via U.S. Postal Service certified mail³ dated May 4, 1998 to the defendant, requesting execution of the National Grain and Feed Association Contract for Arbitration and payment of the arbitration service fee of \$618. Thereafter, the NGFA sent a letter dated May 29, 1998 to the defendant via Federal Express.⁴ In the letter, the NGFA outlined past attempts to contact the defendant and again requested that he execute the arbitration contract and pay the required arbitration service fee. Federal Express reported that the package and contents were delivered to the defendant's address on June 1, 1998 and were signed for by a "P. Marinich." However, the defendant failed to respond to the May 29, 1998 letter.

Southern Thumb filed its initial request for default judgment by letter dated Aug. 7, 1998. Subsequently, it supplemented its request with copies of the grain contract and related

¹ Contract number 50620, together with its related contract numbers 40355 and 24321.

² Notices to the defendant were sent to: Nicholas Marinich, 6300 Ermonet Road, Yale, MI 48097; The U.S. Postal Service domestic return receipt "Article Number Z 015 224 994" showed that the initial letter was delivered to the defendant's address and signed for by a "Patricia W. Marinich" on March 11, 1998.

³ The U.S. Postal Service domestic return receipt "Article Number Z 056 686 517" showed that at least three (3) notices were made to the defendant to claim the second letter. Ultimately, the U.S. Postal Service returned the letter to the NGFA marked as "unclaimed."

⁴ Federal Express Airbill Package Tracking Number 4670688175. Federal Express is a recognized overnight delivery service pursuant to Section 10(c) of the NGFA Arbitration Rules.

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documents at issue in this case. The contractual documents*, bearing contract number 50620, 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. 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."

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."

Section 3(a)(2) of the NGFA Arbitration Rules, among other things, states that: "*If the contract in dispute between a member and 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 rules [emphasis added].*"

Southern Thumb was and is a NGFA Active member. Marinich is not a member. Nevertheless, the contractual documents clearly showed that both parties agreed to submit any unresolved disputes to NGFA arbitration under the NGFA

Arbitration Rules if an arbitration complaint was filed. 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).] Thus, the NGFA had jurisdiction over this case pursuant to Section 3(a)(2) of the NGFA Arbitration Rules.

The NGFA's records showed that the defendant actually received notice of the claims asserted against him by Southern Thumb. Thus, it appeared that Marinich'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 he 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, Nicholas Marinich.

The Award

Therefore, it is ordered that:

◆ Southern Thumb Co-op Inc. is awarded a judgment against Nicholas Marinich in the amount of \$23,625 for losses set forth in its arbitration complaint and the request for default judgment. The plaintiff also is granted an award of costs of \$618 for the arbitration service fee paid in this case.

◆ Compound interest on the total judgment of \$24,243 shall accrue at the statutory rate on judgments applicable in Michigan from Dec. 23, 1997 until paid.

Dated: Sept. 21, 1998

National Grain and Feed Association

By: David C. Barrett Jr.
National Secretary

* Two of these documents were dated Aug. 31, 1995 and one was dated April 25, 1995.

MARINICH
REC'D FEB 17 2004

STATE OF MICHIGAN
IN THE 31ST JUDICIAL CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

Southern Thumb Co-op, Inc.

Case No. K-98-3443-CZ

Plaintiff,

Judge Daniel J. Kelly

-vs-

**NOTICE OF DISMISSAL WITH
PREJUDICE**

Nicholas Marinich

Defendant.

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Pursuant to M.C.R. §2.504(A)(1)(a), Plaintiff hereby gives notice that it is dismissing its Complaint for Judgment on Arbitration Award filed in this matter on October 23, 1998, with prejudice, as the parties have voluntarily settled this matter.

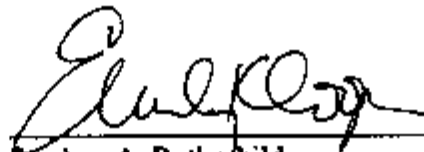


Stephen A. Rothschild
Emily K. Cooper

SHUMAKER, LOOP & KENDRICK, LLP
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

A copy of this NOTICE OF DISMISSAL WITH PREJUDICE was served upon
Nicholas Marinich, 6300 Emmett Road, Yale, Michigan 48097, Defendant, by ordinary U.S.
mail on March 19, 1999.



Stephen A. Rothschild
Emily K. Cooper

SHUMAKER, LOOP & KENDRICK, LLP
Attorneys for Plaintiff