



Arbitration Decision

National Grain and Feed Association

June 18, 1998



Arbitration Case Number 1791

Plaintiff: The Andersons Inc., White Pigeon, Mich.

Defendant: Charles Drobny, Kalamazoo, Mich.

rescinded & retraced

Findings and Default Judgment

The Andersons Inc., the plaintiff, submitted a request for arbitration with the National Grain and Feed Association (NGFA®) by letter dated Nov. 6, 1996, which was received by the NGFA on Nov. 12, 1996.

The plaintiff alleged that Charles Drobny, the defendant, failed to deliver or to provide adequate assurance of delivery of the defendant-seller's "to-arrive" cash contracts (Contract Numbers 26316, 26532, 26565 and 26596) with The Andersons. The Andersons claimed damages in the amount of \$82,925 for market differences between the contract price and replacement cost at the time of cancellation, contract cancellation charges, certain fees associated with the contracts, plus attorney fees, costs of collection and interest.

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 Nov. 13, 1996. Likewise, the defendant was notified of The Andersons' arbitration complaint by letter¹ from the NGFA dated Nov. 13, 1996. The NGFA's letter dated Nov. 13, 1996 was sent to Charles Drobny via U.S. mail.

As required under the NGFA's Arbitration Rules, The Andersons executed the NGFA Contract for Arbitration and returned the executed contract with the arbitration service fee of \$800. Both were received by the NGFA on Nov. 25, 1996.

The defendant was sent a letter via U.S. Postal Service certified mail, dated Nov. 26, 1996, requesting that he execute the NGFA Contract for Arbitration and pay the arbitration service fee. The U.S. Postal Service returned the letter to the NGFA with the indication that the letter was signed for by a "Charles Drobny" on Dec. 2, 1996. On Dec. 13, 1996, the NGFA received a letter from defendant Drobny's attorney stating, among other things, that "there is nothing to arbitrate."

The defendant failed to return the NGFA Contract for Arbitration or pay the arbitration service fee as required by Sections 5(c) and 5(d) of the NGFA Arbitration Rules. Subsequently, The Andersons filed a complaint to compel arbitration in the U.S. District Court, Western District of Michigan. The federal court on March 16, 1998 issued an order² compelling Drobny to arbitrate his claims with The Andersons. The plaintiff, by letter dated March 25, 1998, filed a copy of the order with the NGFA.

The NGFA then sent a letter via U.S. Postal Service certified mail dated March 31, 1998 to the defendant, through his legal counsel, requesting that he execute the

¹ The Nov. 13, 1996 and Nov. 26, 1996 letters were sent to defendant at the following address: Charles Drobny, 9387 W D Ave., Kalamazoo, Mich., 49009, while the March 31, 1998 letter was sent to the defendant's attorneys at the following address: Kevin Manning, Esq. and Robert Stariha, Esq., Reber, Greer, Schuiteman, Stariha & Greer, 40 W. Sheridan, P.O. Box 69, Fremont, Mich., 49412-0069.

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NGFA Contract for Arbitration and pay the arbitration service fee. The defendant failed to do so.

The plaintiff has requested the entry of a default judgment against the defendant based upon the defendant's failure to comply with the court's order and the NGFA Arbitration Rules. The NGFA has jurisdiction over this case pursuant to Section 3(a)(2) of the NGFA Arbitration Rules.

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 provisions of the NGFA Arbitration Rules.

As previously referenced, Section 5(d) of the NGFA Arbitration Rules imposes a duty upon each party to complete and return the NGFA 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 plaintiff, by letter dated April 24, 1998, requested that the NGFA enter a default judgment against Charles Drobny in the amount of \$127,383.85. The plaintiff's letter indicated a copy of its request for a default judgment was sent directly to the defendant's legal counsel. The plaintiff included a sworn affidavit verifying the validity of the contracts and the cancellation invoices. The documents submitted by the plaintiff included copies of the contracts and a copy of the contract cancellation invoice. Each contract contained the following language:

"Both parties agree: a. this transaction is made in accordance with the Grain Trade Rules of the National Grain & Feed Association and the parties will be bound thereby; and b. any disputes or controversies arising out of this contract shall be arbitrated by the National Grain & Feed Association, pursuant to its arbitration rules."

The defendant has not complied with the NGFA Arbitration Rules. This non-compliance has occurred notwithstanding the existence of a federal court order compelling arbitration in this case. Thus, it is appropriate to enter the requested award in favor of the plaintiff, The Andersons Inc., against the defendant, Charles Drobny.

The Award

Therefore, it is ordered that:

The Andersons Inc. is awarded a judgment against Charles Drobny in the amount of \$127,383.85, itemized as follows:

\$82,925.00	Cancellation Invoice Number 064-06010
18,181.56	Outside Counsel Fees to Bring this Matter to Arbitration ³
25,477.29	Compound Interest (<i>calculated at 18 percent from Aug. 8, 1996 to April 23, 1998</i>)
800.00	Arbitration Service Fee

\$127,383.85 Total Judgment as of April 23, 1998

Compound interest on the judgment of \$127,383.85 shall accrue at the rate of 18 percent per annum from April 24, 1998 until paid in full.

Dated: May 12, 1998.

National Grain And Feed Association

By: David C. Barrett Jr.
National Secretary

² The Andersons Inc. v. Charles Drobny, Case No. 1:97-CV-35, U.S. District Ct., West. Dist. of Mich., So. Div. (March 16, 1998) (Order and opinion finding Drobny to be a merchant under Michigan law and compelling arbitration).

³ Each of the contracts provided, among other things, that: "Seller shall also be liable for The Andersons' attorney fees, cost of collection, plus interest."