



# Arbitration Decision

National Grain and Feed Association

May 9, 1997

## Arbitration Case Number 1805

**Plaintiff: Fasco Mills Co., Mendota, Ill.**

**Defendant: Martin Myre, Seneca, Ill.**

### Findings and Default Judgment

Fasco Mills Co. instituted this arbitration case against Martin Myre by filing a complaint with the National Grain and Feed Association (NGFA®) on Jan. 21, 1997. Martin Myre was notified of the complaint by a letter from the NGFA dated Jan. 24, 1997.

A representative of Fasco Mills Co. executed the NGFA Contract for Arbitration and returned it to the NGFA. The NGFA Contract for Arbitration then was sent to Martin Myre, 2985 E. 29<sup>th</sup> Rd., Seneca, Ill., 66136, by certified mail letter dated Jan. 31, 1997. However, the U.S. Postal Service returned that letter to the NGFA with the indication that the letter was "unclaimed" after making at least two notices to Martin Myre (*on Feb. 6 and Feb. 11, 1997*).

Another letter enclosing the NGFA Contract for Arbitration subsequently was sent to Martin Myre via Federal Express (Airbill Tracking Package No. 4670685423) on March 4, 1997. Federal Express confirmed that the letter package was delivered on March 6, 1997. Federal Express is a "recognized overnight delivery service" within the meaning of Section 10 of the NGFA Arbitration Rules.

As Fasco Mills Co.'s complaint pointed out, NGFA arbitration of its claims was based upon the arbitration provisions contained in the contracts entered into between Fasco Mills Co. and Martin Myre. The contracts contained provisions providing, among other things, that:

*"The sole remedy for resolution of any and all disagreements or disputes arising under this contract shall*

*be through arbitration proceedings before the NGFA under the NGFA's Arbitration Rules. The decision and award determined through such arbitration shall be final and binding upon the buyer and seller. Judgment upon an arbitration award may be entered and enforced in any Court having jurisdiction thereof."*

Section 3(a)(2) of the NGFA Arbitration Rules expressly provides 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." There is no doubt that in this case the contracts contained language providing for arbitration by the National Grain and Feed Association. Thus, both parties were deemed to have consented to arbitration under the NGFA Arbitration Rules.

Section 5(d) of the NGFA Arbitration Rules imposes a duty on 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." Defendant Martin Myre should have, and was advised to, return the contract to the NGFA no later than March 20, 1997. Nevertheless, defendant Martin Myre failed to do so.

Plaintiff Fasco Mills Co., by letter dated March 19, 1997, requested that a default judgment be entered against Martin Myre because of the latter's failure to return the NGFA Contract for Arbitration and the appropriate arbitration service fee. The National Secretary

subsequently prepared a "Findings and Default Judgment" order and a letter to the defendant dated April 2, 1997. The April 2 letter informed the defendant that the order "will be entered on Wednesday, April 9, 1997 unless good cause is provided by you to the contrary." The letter, proposed order and a copy of plaintiff's March 19 letter were sent to the defendant via Federal Express package (Airbill Tracking Package No. 4670685681). The package was returned by Federal Express to the NGFA office on April 9 with the notation that three attempts had been made to deliver the package. Federal Express indicated that an individual was present at the defendant's address on the first attempt, but refused to sign for the package.

There was no indication that the defendant intended to execute the NGFA Contract for Arbitration or otherwise comply with the provisions of the NGFA Arbitration Rules. The plaintiff requested that the NGFA enter a default judgment against defendant Martin Myre for his failure to comply with the provisions of the NGFA Arbitration Rules. The plaintiff submitted a sworn affidavit setting forth its damages in the amount of \$217,625.

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. Given the clear arbitration provisions contained in the contracts between the parties and the defendant's complete failure to comply with the NGFA Arbitration Rules, it is appropriate to enter the requested award in favor of the plaintiff, Fasco Mills Co., against Martin Myre, the defendant.

### **The Decision**

It therefore is ordered that:

Fasco Mills Co. is awarded a judgment against Martin Myre in the amount of \$217,625, plus its arbitration service fee of \$1,500 paid in this case. Interest on the judgment of \$219,125 shall accrue from Jan. 21, 1997 until paid at the statutory judgment rate in effect in the state of Illinois.

National Grain and Feed Association

By: David C. Barrett Jr.  
National Secretary