



Arbitration Decision

National Grain and Feed Association

October 9, 1997

Arbitration Case Number 1828[©]

Plaintiff: The Andersons Inc., Maumee, Ohio

Defendant: John Coble, Delphi, Ind.

Findings and Default Judgment

The plaintiff, The Andersons Inc., submitted a request for arbitration with the National Grain and Feed Association (NGFA[©]) by letter dated April 30, 1997, which was received by the NGFA on May 2, 1997.

The plaintiff alleged that the defendant, John Coble, failed to pay amounts owed to The Andersons as a result of cancellation¹ of the defendant-seller's "to-arrive" cash contracts (Contract Numbers 19121, 19122 and 19123) with The Andersons. The Andersons claimed damages in the amount of \$44,925 for market differences between the contract price and replacement cost at the time of cancellation, contract cancellation charges of \$600, 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 May 5, 1997. Likewise, the defendant was notified of The Andersons' arbitration complaint by letter² from the NGFA dated May 5, 1997. The NGFA's letter dated May 5, 1997 was sent to Mr. Coble via U.S. Postal Service certified mail. However, the U.S. Postal Service returned the letter to the NGFA with the notation that the letter was "unclaimed" after making at

least two delivery attempts (May 9 and May 15) to Mr. Coble. The NGFA on June 2, 1997 sent Mr. Coble a letter via Federal Express and regular U.S. mail, which included the original letter and enclosures. Federal Express is a "recognized overnight delivery service" within the meaning of Section 10 of the NGFA Arbitration Rules.

Meanwhile, The Andersons executed the NGFA Contract for Arbitration and returned the executed contract along with the arbitration service fee of \$600 (received by the NGFA on May 15, 1997), as required under the NGFA Arbitration Rules. Subsequently, the NGFA sent the defendant a letter dated May 15, 1997 requesting that he execute the NGFA Contract for Arbitration and pay the arbitration service fee.

The defendant failed to return the NGFA Contract for Arbitration or pay the arbitration service fee. Nevertheless, the NGFA sent an additional letter to the defendant dated June 25, 1997 requesting that he execute the NGFA Contract for Arbitration and pay the required arbitration service fee. That correspondence was sent via both Federal Express and regular U.S. mail on June 25, 1997 and July 9, 1997, respectively. Federal Express records verified that the June 25 letter (and enclosures) was delivered and

¹ The term "cancellation" as used here means the termination of the contracts as a result of a breach or default by one of the parties. NGFA Grain Trade Rule 10 expressly addresses cancellation of defaulted contracts. Both the NGFA Trade Rules and NGFA Arbitration Rules were incorporated into the parties' contracts.

² All notices and correspondence were sent to the defendant at the following address: R.R. 1, Box 53, 6106 W. 1000 North, Delphi, IN 46923.

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signed for by a "J Coble" on July 10, 1997 (Airbill Tracking Package No. 4670686392). The NGFA's June 25 correspondence also advised the defendant that:

"You should note that The Andersons Inc.'s complaint points out that NGFA arbitration on its claims is based on the arbitration provisions contained in the contracts entered into with you. Section 3(a)(2) of the NGFA Arbitration Rules expressly provides, among other things, 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.'"

The plaintiff, by letter dated Aug. 8, 1997, requested that the NGFA enter a default judgment against John Coble in the total amount of \$35,030.22³. In support of its request for a default judgment, The Andersons submitted copies of the contracts at issue, cancellation invoices, settlement statements and the affidavit of its regional controller verifying the calculation of damages.

The NGFA sent a letter and enclosures dated Aug. 27, 1997 via Federal Express and regular U.S. mail to the defendant advising him of The Andersons' request for a default judgment. The defendant was advised that his failure to respond by Sept. 10, 1997 would result in a default judgment being entered against him. Federal Express verified that the package containing the NGFA's Aug. 27 letter and enclosures was delivered to defendant's address and signed for by a "J. Coble" on Aug. 28, 1997 (Airbill Tracking Package No. 4670686090).

The defendant has not responded to any of the NGFA's correspondence, notwithstanding his obligation to do so. Specifically, the contracts between the parties provided as follows:

"Both parties agree: (A) THIS CONTRACT IS MADE IN ACCORDANCE WITH THE APPLICABLE GRAIN TRADE RULES OF THE NATIONAL GRAIN AND FEED ASSOCIATION (A COPY WILL BE PROVIDED UPON

REQUEST) EXCEPT AS MODIFIED HEREIN, 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 AND FEED ASSOCIATION, PURSUANT TO ITS ARBITRATION RULES." [Emphasis contained in original contract.]

There was no indication the defendant intended to execute the NGFA Contract for Arbitration, pay the required arbitration service fee or otherwise comply with the NGFA Arbitration Rules. Section 5(d) 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 violated the time limits in the rules. Further, the defendant was notified that his failure to proceed could result in the entry of a default judgment.

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. 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, The Andersons Inc., against the defendant, John Coble.

It is therefore ordered that:

The Andersons Inc. is awarded a judgment against John Coble in the amount of \$35,030.22. Compound interest at the rate of 9 percent on the judgment shall accrue from Aug. 6, 1997 until paid.

National Grain and Feed Association

Dated: Oct. 1, 1997

By: David C. Barrett Jr.
National Secretary

³ The plaintiff said it was reducing the amount originally requested because The Andersons had applied the amount of \$11,789.59, which would have otherwise been due to Mr. Coble for deliveries of soybeans during the period of Feb. 28-March 3, 1997. The Andersons' modified request included interest at the rate of 9 percent per annum to Aug. 6, 1997.