



# National Grain and Feed Association Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3917

Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: [ngfa@ngfa.org](mailto:ngfa@ngfa.org), Web Site: <http://www.ngfa.org>

Aug. 10, 2000

## Arbitration Case Number 1838

**Plaintiff: Cargill Inc., Minneapolis, Minn.**

**Defendant: Circle S Farms Inc., Columbus, Ohio**

### Factual and Procedural Background

Cargill Inc. (Cargill), the plaintiff, requested the entry of a default judgment in the amount of \$108,655.33, plus interest at an annual rate of 18 percent, against Circle S Farms Inc. (Circle S), the defendant.

The judgment is granted for the reasons set forth below.

Cargill filed its initial arbitration complaint<sup>1</sup> pursuant to a letter dated June 12, 1997, which was received by the National Grain and Feed Association (NGFA) on June 12, 1997. Cargill's arbitration complaint alleged, among other things, that Circle S had defaulted on 16 contracts pursuant to which Circle S had agreed to sell corn, wheat and soybeans to Cargill's Bloomingburg, Ohio, facility. Cargill also represented that each contract contained terms providing for resolution of all disputes pursuant to NGFA arbitration.

Acting upon Cargill's complaint, the NGFA prepared a *National Grain and Feed Association Contract for Arbitration* and sent it to Cargill for execution. The NGFA's records also showed that the defendant, Circle S, was sent initial notice, and a copy, of Cargill's complaint by letter dated June 23, 1997, via U.S. Certified Mail<sup>2</sup>. The U.S. Postal Service domestic return receipt showed that the letter was received at Circle S' address<sup>3</sup> on June 26, 1997.

As required by the NGFA Arbitration Rules, Cargill executed the contract for arbitration and returned it to the NGFA with the \$1,000 arbitration service fee, both of which were received on or about July 7, 1997.

The NGFA then sent a letter dated July 8, 1997 via U.S. Postal Service certified mail<sup>4</sup> to defendant Circle S, which requested execution of the contract for arbitration and payment of the arbitration service fee. The U.S. Postal Service Domestic Return Receipt showed that the letter was received at the same Circle S<sup>5</sup> address.

Soon thereafter, the NGFA received correspondence<sup>6</sup> from the defendant's attorney stating, among other things, that "Circle S Farms Inc. does not consent to arbitration of the matter at issue." Subsequently, further correspondence was received from attorneys representing both Cargill and Circle S Farms. Cargill made an initial request for default judgment by letter dated Jan. 5, 1998. At that point, the National Secretary sent another letter<sup>7</sup> to the defendant's attorney, which stated the following:

"Your client was notified of Cargill's complaint by two letters from this office dated June 23, 1997 and July 8, 1997. Since your client has failed to respond to any of our letters

<sup>1</sup> Cargill originally sought damages totaling \$110,077.52.

<sup>2</sup> U.S. Postal Service article no. Z 370 603 188.

<sup>3</sup> Sent to J. Max Schlichter, Circle S Farms Inc., 4895 Olentangy Blvd., Columbus, Ohio, 43214. A "Julie Caldwell" signed for the letter.

<sup>4</sup> U.S. Postal Service article no. Z 338 917 430.

<sup>5</sup> A "Julie Caldwell" signed for the letter.

<sup>6</sup> Letter dated July 22, 1997 from attorney Richard T. Ricketts.

<sup>7</sup> Letter of Jan. 16, 1998 to attorney Richard Ricketts Esq. The U.S. Postal Service domestic return receipt showed the defendant's attorney received the letter on Jan. 21, 1998.

requesting your client's signature on the contract and the service fee amount to be paid, Cargill, Inc. has requested that a default judgment be entered against Circle S Farms, Inc. ... a **default judgment may be entered against your client without further notice.**" [Emphasis in original.]

Subsequently, Cargill submitted an affidavit<sup>8</sup> and numerous documents in support of its default judgment request, which also was acknowledged as received by the attorney for Circle S. Further correspondence was received from attorneys for the parties and an Ohio federal district court lawsuit resulted.

Eventually, the federal court issued an order<sup>9</sup> compelling arbitration of the issues in dispute. The court found, among other things, that: 1) "the uncontroverted evidence in the current record shows that each contract contained a clear and unambiguous provision requiring arbitration of disputes;" 2) "that as a matter of law the contracts bear no resemblance to contracts of adhesion;" and 3) "as a matter of law this case presents a valid, binding arbitration provision that should be enforced under the [Federal Arbitration Act]." In addition, the court expressly ordered that "the parties shall complete any relevant applications and pay any applicable fees to the NGFA within 10 days after the date of this order."

## The Decision

The defendant clearly received notice of the arbitration complaint filed against it. Nevertheless, the defendant failed to comply with the notices sent to it and its attorney by the NGFA. Further, the defendant opposed Cargill's request for a court order compelling arbitration, but then failed to return the contract for arbitration or arbitration service fee when it was ordered by the court to proceed with arbitration. Thus, it appeared that the defendant made a conscious decision not to proceed with NGFA arbitration.

Cargill was and is a NGFA Active member in good standing. 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."

Thus, the language in the parties' contracts bound both parties to arbitrate this dispute under the NGFA Arbitration Rules, even though the defendant is not a member. A U.S.

district court already reached the same conclusion.

There is no indication that the defendant intends to execute the contract for arbitration, pay the required arbitration service fee, or otherwise comply with the NGFA Arbitration Rules. Section 5 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. Moreover, the defendant clearly received the NGFA's notices.

Section 1 of the NGFA Arbitration Rules provides that the "National Secretary shall have the authority to make such decisions as are necessary to carry out these Rules." Section 5(e) of the NGFA Arbitration Rules expressly authorizes the entry of default judgments where a party "fails to pay the arbitration service fee and/or fails to execute the contract for arbitration." The defendant in this case has failed to comply with the NGFA Arbitration Rules. Thus, it is appropriate to enter the requested award in favor of the plaintiff, Cargill, Incorporated, and against the defendant, Circle S Farms, Inc.

## The Award

Therefore, it is ordered that:

- ◆ Cargill Inc. is awarded a judgment against Circle S Farms Inc. in the amount of \$108,655.33.
- ◆ Compound interest on the judgment shall accrue at the rate of 18 percent per annum from June 11, 1997 until all sums are paid in full.

Dated: Aug. 2, 2000

National Grain and Feed Association

By: David C. Barrett Jr.  
National Secretary

<sup>8</sup> Transmitted pursuant to letter dated Nov. 5, 1998.

<sup>9</sup> *Cargill Incorporated v. Circle S Farms Inc.*, No. C-2-99-00290 (S.D. Ohio, Eastern Div., Feb. 17, 2000) (order compelling arbitration).