



Arbitration Decision

National Grain and Feed Association

February 26, 1998



Arbitration Case Number 1857[©]

Plaintiff: The Andersons Inc., Maumee, Ohio

Defendant: Larry Truckor, Swanton, Ohio

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 Sept. 8, 1997, which was received by the NGFA on Sept. 12, 1997.

The plaintiff alleged that Larry Truckor, the defendant, failed to pay amounts owed to The Andersons as a result of cancellation¹ of the defendant-seller's "to arrive" cash contracts (Contract Numbers 49564, 49851, 49563, 56258, 49852, 46061 and 46062) with The Andersons. The Andersons claimed damages in the amount of \$40,497.50 for market differences between the contract price and replacement cost at the time of cancellation, plus contract cancellation charges, 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 Sept. 22, 1997. Likewise, the defendant was notified of The Andersons' arbitration complaint by letter² from the NGFA dated Sept. 22, 1997. The NGFA's Sept. 22 letter was sent to Mr. Larry Truckor via U.S. Postal Service certified mail. U.S. Postal Service records (Domestic Return Receipt No. Z 338 917 428) verified that the Sept. 22 letter (and enclosure) was delivered to and signed for by a "Larry Truckor" on Sept. 30, 1997.

The Andersons, as required under the NGFA's Arbitration Rules, executed the NGFA Contract for Arbitration and returned it with the arbitration service fee of \$600 (received by the NGFA on Oct. 6, 1997).

Subsequently, the defendant was sent a letter dated Oct. 10, 1997, via U.S. Postal Service certified mail (Domestic Return Receipt No. Z 338 919 889, signed for by a "Larry Truckor" on Oct. 15, 1997) which requested that he execute the NGFA Contract for Arbitration and pay the arbitration service fee. The defendant failed to respond to this request. No further action was requested in this case until the plaintiff submitted a request for a judgment by letter dated Feb. 2, 1998. The plaintiff included a sworn affidavit verifying the validity of documents submitted in the case and outlining the damages claimed.

The documents submitted by the plaintiff disclosed that both parties signed the underlying purchase contracts. Each contract, signed by a representative of the plaintiff and by the defendant, contained the following language:

"Both parties agree: (a) this transaction is made in accordance with the Grain Trade Rules of the National Grain and Feed Association and the parties will be bound thereby; and (b) any disputes or controversies arising out of

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 in the parties' contracts.

² All notices and correspondence were sent to defendant at the following address: 21661 S., Swanton, OH 43558.

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this contract shall be arbitrated by the National Grain & Feed Association, pursuant to its 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.” The defendant did not comply with the NGFA Arbitration Rules. Thus, it is appropriate to enter the requested award in favor of the plaintiff, The Andersons Inc., against the defendant, Larry Truckor.

The Award

Therefore, it is ordered that:

The Andersons Inc. is awarded a judgment against Larry Truckor in the amount of \$44,732.04, itemized as follows:

\$15,260.00	Cancellation Invoice No. 10-28796
25,237.50	Cancellation Invoice No. 10-28795
3,634.54	Delinquency Charge calculated at 18 percent from July 31, 1997 (the date of the contract cancellation invoices) to Jan. 31, 1998. The per diem is \$19.97. See enclosed delinquency charge computation.
<u>600.00</u>	NGFA arbitration service fee previously paid by The Andersons Inc.
\$44,732.04	Total Judgment Requested as of Feb. 5, 1998

Compound interest on the judgment of \$44,732.04 shall accrue at the rate of 9 percent per annum from Feb. 5, 1998 until paid in full.

Dated: Feb. 19, 1998.

National Grain and Feed Association

By: David C. Barrett Jr.
National Secretary