



Arbitration Decision

National Grain and Feed Association

April 9, 1998

Arbitration Case Number 1864

Plaintiff: Consolidated Grain and Barge Co., Cincinnati, Ohio

Defendant: Wesley Hendricks, Franklin, Ind.

Findings and Default Judgment

Consolidated Grain and Barge Co., the plaintiff, submitted an arbitration complaint against Wesley Hendricks, the defendant, by letter dated Nov. 11, 1997. Enclosed with the complaint was a copy of a court order¹ compelling NGFA arbitration of the "disputes and controversies of the parties."

The plaintiff sought an award against the defendant on two different counts or claims: 1) the amount of \$7,867.95 for the return of funds for an alleged overpayment made to the defendant; and 2) the amount of \$12,790.16 for damages allegedly incurred on two contracts breached by the defendant's failure to make deliveries of corn. The plaintiff also sought recovery of attorney fees² in the amount of \$4,550.80, plus costs and arbitration service fees.

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. 25, 1997. Likewise, the defendant (through his attorney of record³) was notified of the plaintiff's arbitration complaint by letter from the NGFA dated Nov. 25, 1997.

The plaintiff, as required under the NGFA's Arbitration Rules, executed the NGFA Contract for Arbitration and returned it with the arbitration service fee of \$429 (received by the NGFA on Dec. 10, 1997).

Subsequently, the defendant (through his attorney) was sent a letter dated Jan. 7, 1998 that requested that he execute the NGFA Contract for Arbitration and pay the arbitration service fee. Among other things, the NGFA letter pointed out that "Section 5(d) of the National Grain and Feed Association's Arbitration Rules requires that both parties complete the Contract for Arbitration within a fifteen (15) day period after receipt." The defendant's attorney forwarded the request to the defendant by letter⁴ dated Jan. 14, 1998. The defendant failed to return the NGFA Contract for Arbitration or pay the arbitration service fee as required under Section 5(d) of the NGFA Arbitration Rules.

The plaintiff, by letter dated Feb. 19, 1998, requested that the NGFA enter a default judgment against the defendant in the amount of \$25,737.91 based upon the defendant's failure to comply with the NGFA Arbitration Rules. The NGFA has jurisdiction over this case

¹ Consolidated Grain and Barge Co. v. Wesley Hendricks, Case No. 41D01-9611-CP-412, Superior Court No. 1 of Indiana for Johnson County (Oct. 23, 1997) (Order Compelling Arbitration).

² Plaintiff's complaint alleged in numbered paragraph 27 that "Contract nos. 0050854 and 0049805 provide for the recovery of attorneys' fees."

³ All notices were sent to the defendant's attorney: Jack Rogers, Esq., Rogers & Gesse, 100 S. Jackson St., Franklin, Ind., 46131.

pursuant to Section 3(a)(2) of the NGFA Arbitration Rules. The Indiana court issued an order compelling arbitration of the claims in this case, and the plaintiff filed the original arbitration complaint with the NGFA within 30 days of issuance of the court order pursuant to Section 3(d) 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.

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 has not complied with the NGFA Arbitration Rules, notwithstanding a court order compelling him to do so. Thus, it is appropriate to enter the requested award in favor of the plaintiff, Consolidated Grain and Barge Co., against the defendant, Wesley Hendricks.

The Award

Therefore, it is ordered that:

Consolidated Grain and Barge Co. is awarded a judgment against Wesley Hendricks in the amount of \$25,737.91, itemized as follows:

\$ 7,867.95	Overpayment Set Forth in Count I of Complaint
12,790.16	Claims for Breach of Contract in Count II of Complaint
4,550.80	Attorneys' Fees
529.00	Costs and arbitration service fees
\$25,737.91	Total Judgment Amount as of Feb. 19, 1998

Compound interest on the judgment of \$25,737.91 shall accrue at the statutory judgment rate in effect in the state of Indiana from Feb. 19, 1998 until the sums are paid in full.

Dated: March 19, 1998.

National Grain and Feed Association

By: David C. Barrett Jr.
National Secretary

⁴ A copy of the letter was served on the NGFA and provided as follows: "Enclosed is the contract and demand for payment in the Consolidated Grain and Barge Co. vs. Hendricks. The deadline is January 22nd for compliance. Please take appropriate action before that date."