



Arbitration Decision

National Grain and Feed Association

May 19, 1998

Arbitration Case Number 1871

Plaintiff: AGP Grain Ltd., Ashville, Ohio

Defendant: Walnut Creek Farms Ltd., Ashville, Ohio

Findings and Default Judgment

AGP Grain Ltd., the plaintiff, submitted a request for arbitration with the National Grain and Feed Association (NGFA®) by letter dated Nov. 26, 1997, which was received by the NGFA on Dec. 1, 1997.

The plaintiff alleged that Walnut Creek Farms Ltd., the defendant, failed to deliver corn to AGP within the delivery period specified in five "hedge-to-arrive" contracts (contract Nos. 6383, 8090, 8262, 8840 and 97174) with AGP Grain Ltd. The plaintiff claimed damages in the amount of \$51,300, plus interest and enforcement costs.

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 Dec. 18, 1997. Likewise, the defendant was notified of AGP Grain Ltd.'s arbitration complaint by letter¹ from the NGFA dated Dec. 18, 1997. The NGFA's Dec. 18 letter was sent to Walnut Creek Farms Ltd. via U.S. Postal Service certified mail.

AGP Grain Ltd., as required by the NGFA Arbitration Rules, executed the NGFA Contract for Arbitration and returned the executed contract with the arbitration service fee of \$800. Both were received by the NGFA on Jan. 20, 1998.

Subsequently, the NGFA sent a letter dated Jan. 21, 1998, which requested that the defendant 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 as required by Sections 5(c) and 5(d) of the NGFA Arbitration Rules.

The "First Argument of AGP Grain Ltd." was received by the NGFA² on Feb. 6, 1998. The plaintiff asserted damages in the amount of \$51,300, plus interest at the rate of 10 percent per annum from Dec. 2, 1996. The plaintiff submitted copies of each of the purchase contracts on which its claims were based. The "Terms and Conditions" contained in each of the contracts included the following numbered paragraph 5:

"This contract is subject to the rules and regulations, insofar as they are consistent with the terms hereof, of the Grain Exchange on which this contract was consummated, or the trade rules of the National Grain & Feed Dealers Association if the buyer is not a member of the Grain Exchange, the Uniform Commercial Code and the laws of the applicable state or states. This contract shall not be subject to the rules and regulations of any other association unless agreed to in writing between the buyer and seller at the time of sale."

¹ The NGFA sent all notices and correspondence to the defendant at the following address: Walnut Creek Farms Ltd., P.O. Box 58, Ashville, OH 43103.

² The plaintiff's attorney certified that a copy was sent directly to Walnut Creek Farms, c/o Jay H. Wippel, Registered Agent, 15880 Whiteside Road, Orient, Ohio 43146-9779; and to Robert H. Huffer Esq., P.O. Box 464, 203 S. Scioto St., Cincinnati, Ohio 43113.

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Thereafter, the NGFA received on March 13, 1998 the plaintiff's "Motion for Default Judgment" as to its claims asserted against Walnut Creek Farms Ltd.³

A review of the plaintiff's first argument and motion for default judgment, as well as the "Terms and Conditions" contained in each of the purchase contracts, showed that the defendant agreed to be bound by the NGFA Grain Trade Rules. NGFA Grain Trade Rule 42 provides that disputes shall be submitted to a NGFA arbitration committee. As asserted by the plaintiff in its submission, similar language referencing the NGFA Trade Rules has been found to bind parties to arbitration even where one party is not a member of the association. [See, e.g., *Hodge Brothers, Inc. v. The Delong Co., Inc.*, 942 F.Supp. 412 (W.D. Wis. 1996).] By entering into the contract, the defendant also consented to NGFA arbitration of any disputes arising under the contracts at issue and bound itself to comply with the NGFA Arbitration Rules should a complaint for arbitration be filed. Thus, the NGFA has jurisdiction over this case pursuant to Section 3(a)(2) of the NGFA Arbitration Rules⁴.

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.

As noted previously, Section 5(d) of the NGFA Arbitration Rules imposes a duty upon 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." Section 5(c) of the NGFA Arbitration Rules imposes an obligation on each party to pay the appropriate arbitration service fee at the same time. The defendant did not comply with the NGFA Arbitration Rules, notwithstanding clear evidence that the defendant was served with notice of the arbitration complaint and all of the plaintiff's claims. Thus, it was appropriate to enter the requested award in favor of the plaintiff, AGP Grain Ltd., against the defendant, Walnut Creek Farms Ltd.

The Award

Therefore, it is ordered that:

AGP Grain Ltd. is awarded a judgment against Walnut Creek Farms Ltd. in the amount of \$51,300 for compensatory damages, plus interest and enforcement costs of \$800.

Compound interest on the judgment of \$51,300 shall accrue at the rate of 10 percent per annum from Dec. 2,

1996 until paid in full. Compound interest on the \$800 award for costs shall accrue at the rate of 10 percent per annum from Jan. 20, 1998 until paid in full.

Dated: May 13, 1998.

National Grain And Feed Association

By: David C. Barrett Jr.
National Secretary

³ Again, the plaintiff certified that copies of the motion were served upon both Walnut Creek Farms and attorney Robert H. Huffer.

⁴ AGP Grain Ltd. is a NGFA Active member. Walnut Creek Farms Ltd. is not a NGFA member. Therefore, jurisdiction over this case is based on the consent of both parties, as evidenced by their contractual agreements.