



Arbitration Decision

National Grain and Feed Association

December 29, 1998

Arbitration Case Number 1905

Plaintiff: Consolidated Grain and Barge Co., Freeport, Ill.

Defendant: Robert Wiltshire (aka Bob Wiltshire), Chadwick, Ill.

Findings and Default Judgment

Consolidated Grain and Barge Co. (Consolidated), the plaintiff, requested the entry of a default judgment in the amount of \$6,706.41, plus costs and interest, against Robert Wiltshire (Wiltshire), the defendant. The judgment was granted for the reasons set forth herein.

Consolidated submitted its request for arbitration with the National Grain and Feed Association by letter dated Jan. 22, 1998, which was received on Jan. 27, 1998. Consolidated's arbitration complaint alleged, among other things, that Wiltshire breached several grain contracts¹ for the sale and delivery of U.S. No. 2 yellow corn and failed to pay amounts owed to Consolidated resulting from the contract cancellations. The plaintiff indicated that each of the contracts were in writing and were signed by Wiltshire. Consolidated's arbitration complaint also stated that each of the contracts contained provisions requiring the parties to submit unresolved disputes to NGFA arbitration. Consolidated claimed damages amounting to \$6,706.41 for market differences between the contract price and replacement cost at the time of cancellation.

Acting upon Consolidated's complaint, the NGFA prepared a contract for arbitration and sent it to Consolidated for execution by letter dated Feb. 13, 1998. The NGFA's records also showed that the defendant was sent initial notice of Consolidated's complaint by letter dated Feb. 13, 1998 via U.S. Postal Service certified mail².

As required by the NGFA Arbitration Rules, Consolidated on Feb. 24, 1998 executed the NGFA contract for arbitration and returned it with the arbitration service fee of \$367.

Subsequently, the NGFA sent a letter via U.S. Postal Service certified mail³ dated Feb. 25, 1998 to the defendant, requesting execution of the NGFA contract for arbitration and payment of the arbitration service fee of \$367. The defendant failed to respond.

Whereupon, Consolidated filed a request for a default judgment on Oct. 2, 1998 in the amount of \$6,706.41, which included pre-judgment interest, costs and all other relief it deemed to be just and proper. Consolidated supplemented its request with copies of the grain contracts at issue in this case. Each of the contracts referenced the NGFA Trade Rules and contained the following provision as part of numbered item 3:

"Seller and Buyer agree that all disputes and controversies of any nature whatsoever between them with respect to this contract shall be arbitrated according to the Arbitration Rules of the National Grain & Feed Association, and that the decision and award determined thereunder shall be final and binding on Seller and Buyer."

¹ Contract numbers 55220, 55272 and 55273.

² Notices to the defendant were sent to: Robert Wiltshire, 412 Marion St., Chadwick, IL 61014; The U.S. Postal Service domestic return receipt "Article Number Z 015 223 158" showed that it was signed by a "Bob Wiltshire."

³ The U.S. Postal Service domestic return receipt "Article Number Z 015 220 899" showed that it was signed for by a "Bob Wiltshire."

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Section 3(a)(2) of the NGFA Arbitration Rules provides, among other things, that:

“If the contract in dispute between a member and non-member 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 rules.**” [Emphasis added.]

Consolidated was and is a NGFA Active member. Wiltshire is not a member. Nevertheless, the contractual documents clearly showed that both parties agreed to submit any unresolved disputes to NGFA arbitration under the NGFA Arbitration Rules if an arbitration complaint was filed. Thus, the NGFA had jurisdiction over this case pursuant to Section 3(a)(2) of the NGFA Arbitration Rules.

The NGFA’s records showed that the defendant actually received notice of the claims asserted against him by Consolidated. Thus, it appeared Wiltshire’s failure to respond was intentional.

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 NGFA Arbitration Rules.

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 failed to comply with the NGFA Arbitration Rules, notwithstanding clear evidence that he was obligated to do so and had received notice of the plaintiff’s claims. Thus, it was appropriate to enter the requested award in favor of the plaintiff, Consolidated Grain and Barge Co., against the defendant, Robert Wiltshire.

The Award

Therefore, it is ordered that:

◆ Consolidated Grain and Barge Co., is awarded a judgment against Robert Wiltshire in the amount of \$6,706.41 for losses set forth in its arbitration complaint and the request for default judgment, as well as \$367 for the arbitration service fee paid in this case.

◆ Compound interest on the total judgment of \$7,073.41 shall accrue at the statutory rate on judgments applicable in Illinois from Jan. 22, 1998⁴ until paid in full.

Dated: Oct. 13, 1998

National Grain and Feed Association

By: David C. Barrett Jr.
National Secretary

⁴ The date of the arbitration complaint initiating this case.