



Arbitration Decision

National Grain and Feed Association

October 8, 1998

Arbitration Case Number 1907

Plaintiff: Southern Thumb Co-op, Inc., Frankenmuth, Mich.

Defendant: Mike Barr, Yale, Mich.

Findings and Default Judgment

Southern Thumb Co-op, Inc. (Southern Thumb), the plaintiff, requested the entry of a default judgment in the amount of \$30,526.50 against Mike Barr (Barr), the defendant. The judgment was granted for the reasons set forth below.

Southern Thumb filed its arbitration complaint pursuant to a letter dated Dec. 22, 1997, which was received by the National Grain and Feed Association (NGFA) on Dec. 24, 1997. Southern Thumb's arbitration complaint alleged, among other things, that Barr had breached several hedge-to-arrive grain contracts.¹ Southern Thumb's arbitration complaint also clearly stated that each of the contracts contained provisions referencing the NGFA Trade Rules, which required the parties to submit unresolved disputes to NGFA arbitration. Likewise, Southern Thumb said the contracts either were signed by Barr or were delivered to him as written confirmation of an oral contract between merchants, and were received without objection.

Acting upon Southern Thumb's complaint, the NGFA prepared a National Grain and Feed Association Contract for Arbitration and sent it to Southern Thumb for execution by letter dated Feb. 19, 1998. The NGFA's records also showed that Barr, the defendant, was sent initial notice of Southern Thumb's complaint by letter dated Feb. 19, 1998 via U.S. Postal Service certified mail².

As required under the NGFA's Arbitration Rules, Southern Thumb on Feb. 25, 1998 executed the National Grain and Feed Association Contract for Arbitration and returned the executed contract with the arbitration service fee of \$653 to the NGFA.

The NGFA then sent a letter via U.S. Postal Service certified mail³ dated May 1, 1998 to the defendant, requesting that he execute the National Grain and Feed Association Contract for Arbitration and pay the arbitration service fee of \$653. Thereafter, the NGFA sent a letter dated May 29, 1998 to the defendant via Federal Express.⁴ Once again, the NGFA requested that the defendant execute the arbitration contract and pay the required arbitration service fee. Past attempts to contact defendant were outlined in the letter. Federal Express reported that the package and its contents were delivered to the defendant's address on June 1, 1998, and were signed for by a "M. Barr." The defendant, however, failed to respond to the May 29, 1998 letter.

Southern Thumb filed its initial request for default judgment on July 24, 1998. Subsequently, it supplemented its request with copies of the grain contracts at issue in this case. Each of those contracts contained the following provision as part of numbered item 5:

¹ Contract numbers 50108, together with its related contract numbers 20284 and 10078; contract number 50886; and contract number 52180.

² Notices to defendant were sent to: Mike Barr, 8767 Duquette, Yale, MI 48097; The U.S. Postal Service domestic return receipt "Article Number Z 338 919 880" showed that at least three notices were made to the defendant to claim the initial letter. Ultimately, the U.S. Postal Service returned the letter to the NGFA marked as "unclaimed."

³ The U.S. Postal Service domestic return receipt "Article Number Z 092 331 381" showed that at least three notices were made to the defendant to claim the second letter. Ultimately, the U.S. Postal Service returned the letter to the NGFA marked as "unclaimed."

⁴ Federal Express is a recognized overnight delivery service pursuant to Section 10(c) of the NGFA Arbitration Rules.

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"THIS TRADE IS MADE UNDER THE TRADE RULES OF THE NATIONAL GRAIN & FEED ASSOCIATION GOVERNING TRANSACTIONS IN GRAIN, EXCEPT AS MODIFIED HEREIN, AND BOTH PARTIES AGREE TO BE BOUND THEREBY. IF A DISPUTE ARISES THAT CANNOT BE SETTLED BETWEEN THE PARTIES TO THIS CONTRACT, BOTH PARTIES THEN AGREE TO ARBITRATE UNDER AND BE BOUND BY THE DECISION OF THE NATIONAL GRAIN & FEED ASSOCIATION ARBITRATION PROCEDURE."

Southern Thumb was and is a NGFA Active member. Barr 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 should an arbitration complaint be filed. Thus, the NGFA had jurisdiction over this case pursuant to Section 3(a)(2) of the NGFA Arbitration Rules, which, among other things, provides:

"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.]

The NGFA's records showed that the defendant actually received notice of the claims asserted against him by Southern Thumb. Thus, it appeared that Barr's failure to respond to the notices regarding Southern Thumb's arbitration complaint 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 National Grain and Feed Association 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 comply and received notice of the plaintiff's claims. Therefore, it was appropriate to enter the requested award in favor of the plaintiff, Southern Thumb Co-op Inc., against the defendant, Mike Barr.

The Award

Therefore, it is ordered that:

Southern Thumb Co-op Inc. is awarded a judgment against Mike Barr in the amount of \$30,526.50 for losses set forth in its arbitration complaint and the request for default judgment. The plaintiff also is granted an award of costs of \$653 for the arbitration service fee paid in this case. Compound interest on the total judgment of \$31,179.50 shall accrue at the statutory

rate on judgments applicable in Michigan from Dec. 22, 1997 until paid in full.

Dated: September 18, 1998

National Grain and Feed Association

By: David C. Barrett, Jr.
National Secretary