



Arbitration Decision

National Grain and Feed Association

October 22, 1998

Arbitration Case Number 1927

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

Defendant: Robert Barr, Greenwood, Mich.

Findings and Default Judgment

Southern Thumb Co-op Inc. (Southern Thumb), the plaintiff, requested entry of a default judgment in the amount of \$64,125 against Robert 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. 29, 1997. Southern Thumb's arbitration complaint alleged, among other things, that Barr breached several hedge-to-arrive grain contracts.¹ Southern Thumb's arbitration complaint also 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 indicated that 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 March 2, 1998. The NGFA's records also showed

that Barr, the defendant, was sent initial notice of Southern Thumb's complaint by letter dated March 2, 1998 via U.S. Postal Service certified mail².

Southern Thumb, as required by the NGFA Arbitration Rules, executed the National Grain and Feed Association Contract for Arbitration and returned the executed contract with the arbitration service fee of \$821 to the NGFA.

The NGFA then sent a letter via U.S. Postal Service certified mail³ dated May 1, 1998 to the defendant, requesting execution of the National Grain and Feed Association Contract for Arbitration and payment of the arbitration service fee of \$821. The NGFA received an initial response dated May 11, 1998 from Robert Barr which, among other things, disputed the existence of contracts between the parties. Barr also stated that "I do not agree under any circumstance to arbitrate with Southern Thumb Co-op because I have no knowledge of any contracts that were not delivered on." A copy of the defendant's letter was transmitted by facsimile to the plaintiff's counsel⁴.

¹ Contract number 50106, together with its related contract number 10066; and contract number 50107, together with its related contract numbers 884 and 20283.

² Notices to the defendant were sent to: Robert Barr, 10207 Yale Road, Greenwood, MI 48006; The U.S. Postal Service domestic return receipt "Article Number Z 015 224 997" showed that the initial letter was delivered to the defendant's address and was signed for by a "Robert Barr" on March 9, 1998.

³ The U.S. Postal Service domestic return receipt "Article Number Z 056 686 525" showed that the letter was delivered to the defendant's address and was signed for by a "Robert Barr" on May 6, 1998.

⁴ The plaintiff's counsel then copied the NGFA on a letter (dated May 21, 1998) sent to an attorney referenced in the defendant's correspondence dated May 11, 1998. The plaintiff's letter explained its allegations and its theory of liability. Likewise, the plaintiff's counsel asked for clarification as to whether the attorney referenced by the defendant represented Mr. Barr. In addition, the plaintiff's counsel stated: "[b]y this letter, we are advising the NGFA that we intend to proceed with the arbitration in this matter with or without Mr. Barr's participation."

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Southern Thumb filed its initial request for default judgment on July 28, 1998. Subsequently, it supplemented its request with copies of the grain contracts at issue in this case. Contract numbers 50106 and 50107 contained the following provision as part of numbered item 5:

"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."

Section 3(a)(2) of the NGFA Arbitration Rules provides, among other things, that: *"If the contract in dispute between a member and nonmember 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]."*

Southern Thumb was and is a NGFA Active member. Barr is not a member. Nevertheless, the contractual documents clearly stated 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 Southern Thumb. Thus, Barr's failure to proceed with arbitration 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 the defendant was obligated to comply and received notice of 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, Robert Barr.

The Award

Therefore, it is ordered that:

◆ Southern Thumb Co-op Inc. is awarded a judgment against Robert Barr in the amount of \$64,125 for losses set forth in its arbitration complaint and the request for default judgment. The plaintiff also is granted an award of costs of \$821 for the arbitration service fee paid in this case.

◆ Compound interest on the total judgment of \$64,946 shall accrue at the statutory rate on judgments applicable in Michigan from Dec. 22, 1997 until paid in full.

Dated: Sept. 21, 1998

National Grain and Feed Association

By: David C. Barrett, Jr.
National Secretary