



Arbitration Decision

National Grain and Feed Association

November 5, 1998

Arbitration Case Number 1938

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

Defendant: Joe Sopha, aka Joseph L. Sopha, Avoca, 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 \$11,894.41 against Joe Sopha (Sopha), 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 Sopha had breached a number of 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 were signed by Sopha 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 4, 1998. The NGFA's records showed that Sopha was sent initial notice of Southern Thumb's complaint by letter dated March 4, 1998 via U.S. Postal Service certified mail².

As required by the NGFA's Arbitration Rules, Southern Thumb executed and returned to the NGFA the contract for arbitration with the arbitration service fee of \$419.

The NGFA then sent a letter via U.S. Postal Service certified mail³ dated May 4, 1998 to the defendant, requesting execution of the National Grain and Feed Association Contract for Arbitration and payment of the arbitration service fee of \$419. The defendant failed to respond in any manner.

Southern Thumb filed its initial request for default judgment by letter dated Aug. 4, 1998. Subsequently, it supplemented its request with copies of the grain contracts at issue in this case. Contract numbers 7175 and 51459 contained the following provision⁴ as part of numbered item 5:

¹ Contract number 7175, together with its related contract numbers 20977 and 875; and contract number 51459, together with its related contract number 40356.

² Notices to the defendant were sent to: Joe Sopha, 7743 Beard Road, Avoca, MI 48006; The U.S. Postal Service domestic return receipt "Article Number Z 015 225 008" showed that the initial letter was delivered to the defendant's address and was signed for by an "Adam Sopha" on March 7, 1998.

³ The U.S. Postal Service domestic return receipt "Article Number Z 056 687 859" showed that the letter was delivered to the defendant's address and was signed for by a "Sue Sopha" on May 7, 1998.

⁴ There were apparently various amendments to the contracts, but each contract series included provisions requiring NGFA arbitration on a copy bearing the signature of a "Joseph L. Sopha."

“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. Sopha 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 each of the NGFA’s letters to the defendant were delivered to his address. Thus, the defendant received notice of the claims asserted against him by Southern Thumb and his failure to proceed with arbitration regarding Southern Thumb’s arbitration complaint appeared to be 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 do so 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, Joe Sopha.

The Award

Therefore, it is ordered that:

◆ Southern Thumb Co-op Inc. is awarded a judgment against Joe Sopha in the amount of \$11,894.41 for losses set forth in its arbitration complaint and its request for default judgment. The plaintiff also is granted an award of costs of \$419 for the arbitration service fee paid in this case.

◆ Compound interest on the total judgment of \$12,313.41 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