



Arbitration Decision

National Grain and Feed Association

December 3, 1998

Arbitration Case Number 1944

Plaintiff: The Andersons Inc., Maumee, Ohio

Defendant: Keesling Agri Service Inc., aka Keesling Agri Service, Muncie Ind.

Findings and Default Judgment

The Andersons Inc. (Andersons), the plaintiff, submitted a request for arbitration with the National Grain and Feed Association (NGFA) by letter dated March 18, 1998, which was received on March 20, 1998.

The plaintiff alleged that Keesling Agri Service Inc. (Keesling), the defendant, failed to pay the amounts owed to The Andersons as a result of cancellation¹ of the defendant-seller's "to arrive" cash contract² with The Andersons. The Andersons claimed damages in the amount of \$4,778.56 for market differences between the contract price and replacement cost at the time of cancellation, as well as contract cancellation charges, attorney fees, costs of collection and interest.

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 March 27, 1998. Likewise, the defendant was notified of the Andersons' arbitration complaint by letter³ from the NGFA dated March 27, 1998. The NGFA's March 27, 1998 letter was sent via U.S. Postal Service certified mail. The NGFA's records showed that the letter was delivered and signed for by a "Larry Keesling" (Domestic Return Receipt Article No. Z 146 468 550).

As required under the NGFA's Arbitration Rules, The Andersons executed the NGFA Contract for Arbitration and returned it along with the arbitration service fee of \$348⁴. The defendant then was sent a letter via U.S. Postal Service certified mail dated April 13, 1998 requesting that it execute the National Grain and Feed Association Contract for Arbitration and pay the required service fee. The NGFA's records showed that the letter was delivered and signed for by a "Larry Keesling" (Domestic Return Receipt Article No. Z 015 218 783).

The defendant failed to respond to the NGFA's notices. Whereupon The Andersons, by letter dated May 13, 1998, requested entry of a default judgment against Keesling based upon its non-compliance with the NGFA Arbitration Rules. The NGFA on May 27, 1998 sent Keesling a letter via Federal Express⁵ requesting once again that the National Grain and Feed Association Contract for Arbitration be executed and the arbitration service fee paid. Federal Express records verified that the letter package was delivered and signed for by a "M. Keesling" on May 28, 1998 (Airbill Tracking Package No. 4670688142).

¹ The term "cancellation" as used here means the termination of the contracts as a result of a breach or default by one of the parties. NGFA Grain Trade Rule 10 expressly addresses cancellation of defaulted contracts. Both the NGFA Trade Rules and NGFA Arbitration Rules were incorporated into the parties' contracts.

² Contract No. 37366.

³ Notices were sent and addressed as follows to: Mr. Larry Keesling, Keesling Agri Service, Inc., 5809 W. Memorial Drive, CR 100 S., Muncie, IN 47302.

⁴ Letter from The Andersons dated April 6, 1998 and received by the NGFA on April 8, 1998.

⁵ Federal Express is a "recognized overnight delivery service" within the meaning of Section 10 of the NGFA Arbitration Rules.

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The NGFA's May 27, 1998 correspondence also advised the defendant that: "The Andersons Inc. has request that a default judgment be entered against your company for failure to comply with the NGFA Arbitration Rules. You should sign the NGFA Contract for Arbitration and return it, along with the arbitration service fee of \$348 to this office by June 4, 1998. Otherwise a default judgment may be entered against you."

The plaintiff requested that the NGFA enter a default judgment against Keesling Agri Service Inc., in the total amount of \$5,508.88. The plaintiff also requested that it be awarded reimbursement of the \$348 arbitration fee it paid in this case. The plaintiff included with its request copies of the contractual documents at issue and an affidavit verifying the accuracy of the documents and the damages calculations. The defendant did not respond to any of the NGFA's correspondence, notwithstanding its clear obligation to do so. Specifically, the contract between the parties provided as follows:

"Both parties agree:

"(a) this transaction is made in accordance with the Grain Trade Rules of the National Grain and Feed Association and the parties will be bound thereby; and

(b) any disputes or controversies arising out of this contract shall be arbitrated by the National Grain & Feed Association, pursuant to its arbitration rules."

Section 3(a)(2) of the NGFA Arbitration Rules provides, among other things, that: "if the contract in dispute between a member⁶ 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 Arbitration Rules." The contract in this case clearly provided that unresolved disputes would be subject to NGFA arbitration pursuant to the NGFA Arbitration Rules. In addition, it appeared that the defendant signed the contract containing the NGFA arbitration provision because the contract contained a signature of a "Larry Keesling."

There was no indication that the defendant intended to execute the National Grain and Feed Association Contract for Arbitration, pay the required arbitration service fee or otherwise comply with the NGFA Arbitration Rules. Section 5(d) of the NGFA Arbitration Rules requires a party to "complete the 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 violated the time limit in the rules. Moreover, the defendant clearly received the NGFA's notices and was notified that its failure to proceed could result in the entry of a default judgment.

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. The defendant in this case failed to comply with the NGFA Arbitration Rules. Thus, it was appropriate to enter the requested award in favor of the plaintiff, The Andersons Inc., against the defendant, Keesling Agri Services Inc.

The Award

Therefore, it was ordered that:

The Andersons, Inc. was awarded a judgment against Keesling Agri Services, Inc., itemized as follows:

\$4,778.56	Cancellation invoice number 066-03409.
382.32	Interest/delinquency charges at the rate of 18 percent per annum from Dec. 2, 1997 to May 13, 1998.
<u>348.00</u>	NGFA arbitration service fee.
\$5,508.88	Total default judgment award.

Compound interest on the judgment amount of \$5,508.88 shall accrue at the rate of 18 percent per annum from May 13, 1998 until paid in full.

Dated: Sept. 18, 1998.

National Grain and Feed Association

By: David C. Barrett Jr.
National Secretary

⁶ The Andersons was and is a NGFA Active member. Keesling is not a NGFA member.