



# Arbitration Decision

National Grain and Feed Association

February 11, 1999

## Arbitration Case Number 1959

**Plaintiff: The Andersons Inc., Maumee, Ohio**

**Defendant: Steve Pixley d/b/a Pixley Farms, Tecumseh, MI**

### Findings and Default Judgment

The Andersons Inc., the plaintiff, requested the entry of a default judgment in the amount of \$45,823.10 for differences between the contract price and replacement costs, as well as attorney's fees, collection costs and interest, against Steve Pixley d/b/a Pixley Farms (Pixley), the defendant. The judgment was granted for the reasons set forth herein.

The Andersons filed its arbitration complaint with the National Grain and Feed Association in a letter dated June 26, 1998, which was received on June 29, 1998. The arbitration complaint alleged that Pixley refused to pay amounts owed as a result of several breached to-arrive cash grain contracts<sup>1</sup>. Each of the five contracts was for delivery of U.S. No. 2 yellow corn. The total quantity of corn contracted for delivery was 30,000 bushels. After canceling the contracts, The Andersons said it made attempts to settle the dispute with Pixley. However, it said Pixley failed to meet all the terms of the settlement agreement.

Acting upon The Andersons' complaint, the NGFA prepared a National Grain and Feed Association contract for arbitration and sent it to The Andersons for execution by letter dated June 30, 1998. The NGFA's records also showed that Pixley, the defendant, was sent initial notice of The Andersons' complaint by letter dated June 30, 1998 via U.S. Postal Service certified mail<sup>2</sup>.

As required by the NGFA Arbitration Rules, The Andersons on July 17, 1998 executed the contract for arbitration and returned the executed contract with the arbitration service fee of \$717 to the NGFA. Subsequently, the NGFA sent a letter dated July 17, 1998 to the defendant via U.S. Postal Service certified mail<sup>3</sup>, which requested execution of the contract for arbitration and payment of the arbitration service fee of \$717. However, the defendant failed to respond.

The Andersons filed its request for a default judgment on Oct. 5, 1998 and supplemented its request with an affidavit and copies of the grain contracts at issue in this case. Each of the contracts appeared to be signed by the defendant and contained the following provision as part of numbered item 13:

*"Both Parties Agree:*

*"a. this transaction is made in accordance with the Grain Trade Rule of the National Grain & Feed Association and the parties will be bound thereby; and*

*"b. any disputes or controversies rising 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:

<sup>1</sup> Contract numbers 925087, 26035, 923922, 926651 and 926035.

<sup>2</sup> All notices to the defendant were sent to: Mr. Steve Pixley, Pixley Farms, 8514 Pennington Rd., Tecumseh, MI 49286; The U.S. Postal Service domestic return receipt "article number Z 092 304 247" showed that the package was signed for by a "Cheryl Pixley" on July 3, 1998.

<sup>3</sup> The U.S. Postal Service domestic return receipt "article number Z 050 040 181" showed that the package was signed for by a "Cheryl Pixley" on July 30, 1998.

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"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 Andersons Inc. was and is a NGFA active member. Steve Pixley d/b/a Pixley Farms 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 has 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 The Andersons. Thus, it appeared that Pixley's failure to respond to the notices regarding The Andersons' 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 procedural decisions 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 comply and received notice of the plaintiff's claims. Therefore, it was appropriate to enter the requested award in favor of the plaintiff, The Andersons Inc., against the defendant, Steve Pixley d/b/a Pixley Farms.

### **The Award**

Therefore, it is ordered that:

▶ The Andersons Inc. is awarded a judgment against Steve Pixley d/b/a Pixley Farms in the amount of \$45,106.10 for losses set forth in its arbitration complaint and the request for default judgment. The plaintiff also is granted an award of costs of \$717 for the arbitration service fee paid in this case.

▶ Compound interest on the total judgment of \$45,823.10 shall accrue at the statutory rate of 18 percent per annum from Oct. 5, 1998 until paid in full.

Dated: Oct. 26, 1998

**National Grain and Feed Association**

By: David C. Barrett Jr.  
National Secretary