



# National Grain and Feed Association Arbitration Decision

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August 24, 2000

## Arbitration Case Number 1986

**Plaintiff: SunMark Ltd., Mansfield, Ohio**

**Defendant: Scott Carpenter, dba ACA Farms, Galion, Ohio**

### Factual and Procedural Background

SunMark Ltd. (SunMark), the plaintiff, requested the entry of a default judgment in the amount of \$35,605.26 against Scott Carpenter, *dba* ACA Farms (Carpenter), the defendant.

The judgment was granted for the reasons set forth below.

SunMark filed its arbitration complaint pursuant to a letter dated April 3, 2000, received by the National Grain and Feed Association (NGFA) on April 10, 2000. Among other things, SunMark's arbitration complaint alleged "non delivery of cash corn contract, undelivered hedge to arrive contracts and money owed to us from a previous contract that was canceled and partially paid for." SunMark alleged that it had sustained damages of \$35,605.26 arising from the contracts<sup>1</sup>.

Acting upon SunMark's complaint, the NGFA prepared a *National Grain and Feed Association Contract for Arbitration* and sent it to SunMark for execution. The NGFA's records also showed that defendant Carpenter was sent initial notice, and a copy, of SunMark's complaint on June 15, 2000 via U.S. certified mail<sup>2</sup>.

As required by the NGFA Arbitration Rules, SunMark executed the contract for arbitration and returned with the arbitration service fee of \$678 to the NGFA.

The NGFA then sent a letter via U.S. Postal Service certified mail<sup>3</sup> dated July 14, 2000 to defendant Carpenter, which requested execution of the contract for arbitration and payment of the arbitration service fee. The NGFA letter included the following paragraph:

**"FAILURE TO COMPLY WITH THE NGFA ARBITRATION RULES AND/OR FAILURE TO FILE ANY RESPONSIVE STATEMENT WITH THE NATIONAL SECRETARY MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU, WHICH THE PLAINTIFF MAY ENFORCE IN A COURT OF LAW. FAILURE TO RESPOND TO THIS NOTICE AND PLAINTIFF'S CLAIM MAY AFFECT YOUR LEGAL RIGHTS."** [Emphasis in original.]

Nevertheless, defendant Carpenter failed to return an executed copy of the contract for arbitration or the required arbitration service fee.

SunMark submitted copies of the contracts between the parties, accompanied by copies of other records showing how its damages were calculated.

<sup>1</sup> "Purchase Contract and Confirmation" numbers 5545, 3345 and 3346.

<sup>2</sup> U.S. certified mail receipt article no. 7099 3400 0011 8589 3388. The U.S. Postal Service domestic return receipt showed that the letter was delivered to, and signed for by, Scott Carpenter on or about July 1, 2000.

<sup>3</sup> U.S. certified mail receipt article no. 7099 3400 0004 2803 9620.

## The Decision

The defendant clearly received notice of the arbitration complaint filed against him. Thus, it appeared that the defendant made a conscious decision not to proceed with NGFA arbitration.

Section 3(a)(2) of the NGFA Arbitration Rules expressly provides, among other things, that: “[i]f the contract in dispute between a member and a 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.”

SunMark submitted copies of the parties’ contracts, each of which provided as follows on the front side:

“1. The rules and regulations of the National Grain and Feed Association shall govern except as modified or limited herein, and both parties agree to be bound thereby. The parties both agree that the sole remedy for resolution of all disagreements or disputes arising between the parties under this agreement shall be arbitration proceedings before NGFA under NGFA Arbitration rules. The decision and award determined by such arbitration shall be final and binding upon both parties.”

Thus, the language in the parties’ contracts bound both parties to arbitrate this matter under the NGFA Arbitration Rules, even though the defendant was not a member<sup>4</sup>.

However, there was no indication that the defendant intended to execute the *NGFA Contract for Arbitration*, pay the required arbitration service fee or otherwise comply with the NGFA Arbitration Rules. Section 5 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.” The defendant violated the time limits in the rules.

Section 1 of the NGFA Arbitration Rules provides that the “National Secretary shall have the authority to make such decisions as are necessary to carry out these Rules.” Section 5(e) of the NGFA Arbitration Rules expressly authorizes the entry of default judgments where a party “fails to pay the arbitration service fee and/or fails to execute the contract for arbitration.” 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, SunMark Ltd., and against the defendant, Scott Carpenter, *dba* ACA Farms.

## The Award

Therefore, it was ordered as follows:

- ◆ SunMark Ltd. is granted a judgment against Scott Carpenter, *dba* ACA Farms, in the amount of \$35,605.26.
- ◆ Compound interest on the judgment shall accrue at the highest statutory rate on judgments applicable in Ohio from April 3, 2000, until paid in full.

Dated: Aug. 10, 2000

**National Grain and Feed Association**

By: David C. Barrett Jr.  
National Secretary

<sup>4</sup> *SunMark Ltd. was and is a NGFA Active member.*