



Arbitration Decision

National Grain and Feed Association

December 18, 1997

Arbitration Case Number 1851

Plaintiff: The Andersons Inc., Maumee, Ohio

Defendant: Allen Stautz, individually, and d/b/a Stautz Farms, White Pigeon, Mich.

Findings and Default Judgment

The Andersons Inc., the plaintiff, submitted a request for arbitration with the National Grain and Feed Association (NGFA®) by letter dated July 21, 1997, which was received by the NGFA on July 24, 1997.

The plaintiff alleged that Allen Stautz, individually, and d/b/a Stautz Farms, the defendant, failed to pay amounts owed to The Andersons as a result of cancellation¹ of the defendant-seller's "to-arrive" cash contracts (Contract Nos. 26665, 923919, 926237, 923256 and 923920) with The Andersons. The Andersons claimed damages in the amount of \$36,711.90 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 July 31, 1997. Likewise, the defendant was notified of The Andersons' arbitration complaint by letter² from the NGFA dated July 31, 1997. The NGFA's July 31 letter was sent via U.S. Postal Service certified mail to Mr. Allen Stautz, individually, and Stautz Farms. However, the U.S. Postal Service returned the letters to the NGFA with the notation that the letters were both "unclaimed" after making at least two notices for each (Aug. 5 and Aug. 13).

The Andersons, as required by the NGFA Arbitration Rules, executed the NGFA Contract for Arbitration and returned it with the arbitration service fee of \$600 by letter dated Aug. 4, 1997. Both were received by the NGFA on Aug. 8, 1997. Subsequently, the defendant was sent a letter dated Aug. 19, 1997, in which he was requested to execute the NGFA Contract for Arbitration and pay the arbitration service fee.

On Sept. 10, 1997, the NGFA sent Allen Stautz a letter via Federal Express that included the original letter and enclosures. Federal Express records verified that the Sept. 10 letter was delivered and signed for by an "A. Stautz" on Sept. 11, 1997 (Airbill Tracking Package No. 4670685821). Federal Express is a "recognized overnight delivery service" within the meaning of Section 10 of the NGFA Arbitration Rules.

The NGFA's Sept. 10 correspondence also advised the defendant that:

"You should note that The Andersons Inc.'s complaint points out that NGFA arbitration on its claims is based on the arbitration provisions contained in the contracts entered into with you. 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

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 in the parties' contracts.

² All notices and correspondence were sent to the defendant at the following address: 14463 West U.S. 12, White Pigeon, Mich., 49099.

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under its Arbitration Rules, the parties to the contract shall be deemed to have consented to arbitration under these Arbitration Rules.”

Specifically, the contracts between the parties in this case provided as follows:

“Both parties agree: (a) this transaction is made in accordance with the Grain Trade Rules of the National Grain & 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 and Feed Association, pursuant to its arbitration rules.”

The defendant failed to return the NGFA Contract for Arbitration or pay the arbitration service fee. The plaintiff, by letter dated Oct. 30, 1997, requested that the NGFA enter a default judgment against Allen Stautz in the total amount of \$36,711.90. Nevertheless, the NGFA sent an additional letter to the defendant dated Nov. 5, 1997 requesting that he execute the NGFA Contract for Arbitration and pay the required arbitration service fee by Nov. 17, 1997. The Nov. 5 letter also advised Mr. Stautz that a failure to do so would result in a default judgment being entered against him. That correspondence was sent via both Federal Express and regular U.S. mail on Nov. 5, 1997. Federal Express records verified that the Nov. 5 letter was delivered and signed for by a “R. Stautz” at the defendant’s address on Nov. 6, 1997 (Airbill Tracking Package No. 4670687674).

The defendant did not respond to any of the NGFA’s correspondence, notwithstanding his clear obligation to do so. Further, 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(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.” The defendant violated the time limits in the rules. Moreover, the defendant was notified that his 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 provisions of 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, Allen Stautz, individually, and d/b/a Stautz Farms.

It therefore is ordered that:

The Andersons Inc. is awarded a judgment against Allen Stautz, individually, and d/b/a Stautz Farms in the amount of \$40,378.51, itemized as follows:

\$31,518.77	Cancellation of Invoice No. 64-6354
2,742.81	Compound interest on above invoice calculated at 9 percent per annum with a per diem of \$7.77 for 353 days from date of cancellation
5,193.13	Cancellation of invoice No. 64-6507
332.80	Compound interest on above invoice calculated at 9 percent per annum with a per diem of \$1.28 for 260 days from date of cancellation
<u>600.00</u>	National Grain and Feed Association arbitration service fee
\$40,378.51	Total Default Judgment Award

Compound interest on the judgment shall accrue at the rate of 9 percent per annum from Dec. 5, 1997 until paid.

Dated: Dec. 5, 1997.

National Grain and Feed Association

By: David C. Barrett, Jr.
National Secretary