



Arbitration Decision

National Grain and Feed Association

December 29, 1998

Arbitration Case Number 1955

Plaintiff: Commodity Specialists Co., Cordova, Tenn.

Defendant: McCormick Grain, Wichita, Kan.

Findings and Default Judgment

Commodity Specialists Co. (CSC), the plaintiff, requested the entry of a default judgment against McCormick Grain (McCormick), the defendant. The judgment was granted for the reasons set forth herein.

CSC filed its request for arbitration with the National Grain and Feed Association (NGFA) by letter dated June 2, 1998, which was received on June 4, 1998. CSC's arbitration complaint alleged, among other things, that it sold 2,500 tons of cottonseed burrs to McCormick on Aug. 28, 1996 for September 1996 f.o.b. shipment in buyer's trucks¹. CSC alleged that the shipment period later was extended to June 30, 1997. Ultimately, CSC said it sold out the unshipped balance (2,123 tons) for McCormick's account on July 23, 1997. CSC claimed damages of \$10,615, plus interest.

Acting upon CSC's complaint, the NGFA prepared a NGFA contract for arbitration and sent it to CSC for execution by letter dated June 11, 1998. The NGFA's records also showed that McCormick, the defendant, was sent initial notice of CSC's complaint by letter dated June 11, 1998 via U.S. Postal Service certified mail².

As required by the NGFA Arbitration Rules, CSC on June 18, 1998 executed the contract for arbitration and returned the executed contract with the arbitration service fee of \$406. Subsequently, the NGFA sent a letter³ dated June 19, 1998 via U.S. Postal Service certified mail to the defendant, which requested execution of the NGFA contract for arbitration and payment of the arbitration service fee of \$406. Thereafter, the NGFA sent a letter dated July 8, 1998 by standard U.S. mail requesting that the defendant execute the contract for arbitration. The NGFA made a further attempt to contact the defendant by sending the documents via Federal Express⁴ on July 13, 1998. In this correspondence, the NGFA outlined previous attempts to contact the defendant and once again requested that he execute the arbitration contract and pay the required arbitration service fee. Federal Express reported that the package and its contents were delivered to the defendant's address on July 15, 1998. However, the defendant failed to respond.

CSC, by letter dated Sept. 30, 1998, requested entry of a default judgment against the defendant, and supplemented its request with an affidavit of damages accompanied by copies of

¹ CSC submitted a copy of the broker's confirmation and the CSC confirmation sent to McCormick. CSC indicated that its confirmation was signed by Jeff Heiman, a duly authorized representative of McCormick.

² The notice was mailed to the following address: P.O. Box 2120, Wichita, KS 67201. The U.S. Postal Service domestic return receipt "Article Number Z 092 304 215" showed that the letter was delivered to the defendant's address and was signed for on June 15, 1998.

³ The U.S. Postal Service domestic return receipt "Article Number Z 092 304 224" was returned to the NGFA marked "refused Heiman & Co."

⁴ The Federal Express package was sent to: James McCormick, McCormick Grain, 121 E. Kellogg, Wichita, KS 67202.

the contractual documents and supporting documents relevant to its claim. CSC's contract confirmation expressly referenced the NGFA Trade Rules on the first page. The broker's confirmation simply stated that "Association Trade Rules to govern as applicable on all commodities."

Section 3(a)(2) of the NGFA Arbitration Rules provides, among other things, that:

"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.]

CSC was and is a NGFA Active member. McCormick is not a member. Nevertheless, the contractual documents showed that both parties agreed to be bound by the NGFA Trade Rules. Cottonseed burrs are defined as a "cotton plant by-product" in the *1998 Official Publication* of the Association of American Feed Control Officials, and hence are a feedstuff covered by the NGFA Feed Trade Rules. NGFA Feed Trade Rule 24 requires that disputes arising under those rules are subject to NGFA arbitration. Contractual provisions incorporating the NGFA Trade Rules have been found to bind parties to NGFA arbitration, even where one party is not a member of the association. [See, e.g., *Hodge Brothers, Inc. v. The DeLong Co., Inc.*, 942 F.Supp. 412 (W.D. Wis. 1996).] 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 the defendant actually received notice of the claims asserted against it by CSC. Thus, it appeared that McCormick's failure to respond 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 do so and received notification of the plaintiff's claims. Therefore, it was appropriate to enter the requested award in favor of the plaintiff, Commodity Specialists Co., against the defendant, McCormick Grain.

The Award

Therefore, it is ordered that:

▶ Commodity Specialists Co. is awarded a judgment against McCormick Grain in the amount of \$13,521, calculated as follows:

• Loss on sell-out for buyer's account:	\$10,615
• Costs (arbitration service fee):	\$ 406
• Attorney fees to collect judgment:	\$ 2,500

▶ Compound interest on the sum of \$10,615 shall accrue at the rate of 8.5 percent per annum from July 23, 1997 until paid in full. Compound interest on the attorney fees and costs in the amount of \$2,906 shall accrue at the rate of 8.5 percent per annum from Oct. 8, 1998 until the judgment is paid in full.

Dated: Oct. 8, 1998

National Grain and Feed Association

By: David C. Barrett Jr.
National Secretary