



# Arbitration Decision

National Grain and Feed Association

December 17, 1998

## Arbitration Case Number 1957

**Plaintiff: Bartlett and Co., Kansas City, Mo.**

**Defendant: C.J. Frank, Merino, Colo.**

### Findings and Default Judgment

Bartlett and Co. (Bartlett), the plaintiff, requested the entry of a default judgment in the amount of \$5,539.99, plus costs and interest, against C.J. Frank (Frank), the defendant. The judgment was granted for the reasons set forth herein.

Bartlett filed a request for arbitration with the National Grain and Feed Association (NGFA) by letter dated June 17, 1998, which was received on June 22, 1998. Bartlett's arbitration complaint alleged, among other things, that Frank had defaulted on milo purchase contract number 7938, dated Nov. 20, 1997. Bartlett alleged that Frank was obligated to pick up 19,643 bushels of milo at the Bartlett facility in Eads, Colo., between Dec. 1, 1997 and Jan. 31, 1998. A copy of the sale confirmation referencing "RULES: NGFA" was enclosed with Bartlett's complaint.

Acting upon Bartlett's complaint, the NGFA prepared a NGFA Contract for Arbitration and sent it to Bartlett for execution by letter dated June 23, 1998. The NGFA's records also showed that the defendant was sent initial notice of Bartlett's complaint by letter dated June 23, 1998 via U.S. Postal Service certified mail<sup>1</sup>.

Bartlett, as required by the NGFA Arbitration Rules, executed the NGFA Contract for Arbitration and returned the executed contract with the arbitration service fee of \$355.

Subsequently, the NGFA sent a letter dated July 9, 1998 via U.S. Postal Service certified mail<sup>2</sup> to the defendant, which requested execution of the NGFA Contract for Arbitration and payment of the arbitration service fee of \$355. The defendant failed to execute the arbitration contract or pay the arbitration service fee.

Bartlett, by letter dated Aug. 19, 1998, requested entry of a default judgment against the defendant for failure to comply with the NGFA Arbitration Rules or otherwise take part in the arbitration proceeding. In support of its request, Bartlett also submitted a letter from its general manager in Eads, Colo., in which Bartlett stated that it had contracted with C.J. Frank on at least five separate occasions. The local general manager also stated that: "In review, all of the contracts that we have entered into with Mr. Frank have been governed by N.G.F.A. rules (including arbitration). Mr. Frank has satisfactorily executed all contracts prior to the disputed contract, even though he never signed and returned the provided written instrument."

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

<sup>1</sup> Notices to the defendant were sent to: C.J. Frank, Star Route 11, Merino, CO 80741; The U.S. Postal Service domestic return receipt "Article Number Z092 304 226" showed that the initial letter was delivered to the defendant's address and was signed for by a "Marilyn Frank" or "Marilinn Frank" on June 23, 1998.

<sup>2</sup> The U.S. Postal Service domestic return receipt "Article Number Z056 687 869" showed that the letter was delivered to the defendant's address and was signed for by a "Marilyn Frank" or "Marilinn Frank" on July 13, 1998.

© Copyright 1998 by National Grain and Feed Association. All rights reserved. Federal copyright law prohibits unauthorized reproduction or transmission by any means, electronic or mechanical, without prior written permission from the publisher, and imposes fines of up to \$25,000 for violations.

or under its Arbitration Rules, **the parties to the contract shall be deemed to have consented to arbitration under these rules.**" [Emphasis added.]

Bartlett was (and is) a NGFA Active member. Frank is not a member. Nevertheless, the contractual document submitted by Bartlett clearly showed that the NGFA rules were referenced in the written confirmation. NGFA Grain Trade Rule 42 and NGFA Feed Trade Rule 24 require that unresolved disputes be submitted to NGFA arbitration. Language referencing merely the NGFA Trade Rules has been found to bind both parties to NGFA arbitration, even when 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).] In Bartlett's confirmation, the language was even broader because the reference was to all NGFA rules. 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 each of the NGFA's letters to the defendant were actually delivered to his address. Thus, the defendant received notice of the claims asserted

against him by Bartlett, and his failure to proceed with arbitration appeared to be 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 it 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, Bartlett and Co. against the defendant, C.J. Frank.

## The Award

Therefore, it is ordered that:

▶ Bartlett and Co. is awarded a judgment against C.J. Frank in the amount of \$5,539.99 for losses set forth in its arbitration complaint and request for default judgment. The plaintiff also is granted an award of \$355 representing the arbitration service fee paid in this case.

▶ Compound interest on the total judgment of \$5,894.99 shall accrue at the statutory rate on judgments applicable in Colorado from June 17, 1998 until paid in full.

Dated: Sept. 21, 1998

National Grain and Feed Association

By: David C. Barrett Jr.  
National Secretary