



# National Grain and Feed Association Arbitration Decision

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Aug. 10, 2000

## Arbitration Case Number 1989

**Plaintiff:** Nicollet Farmers Exchange, Nicollet, Minn.

**Defendant:** Andy Lorence Co., Minneapolis, Minn.

### Factual and Procedural Background

Nicollet Farmers Exchange (Nicollet), the plaintiff, requested the entry of a default judgment in the amount of \$42,460.06, plus interest, against Andy Lorence Co., the defendant.

The judgment is granted for the reasons set forth below.

Nicollet filed its arbitration complaint pursuant to a letter dated May 26, 2000, which was received by the National Grain and Feed Association (NGFA) on May 30, 2000. Nicollet's arbitration complaint alleged, among other things, that Andy Lorence Co. had failed to pay for 24,491.42 bushels of yellow corn shipped on contracts<sup>1</sup> between the parties.

Each contract stipulated on the first page under "Special Instructions/Remarks" that it was "[s]ubject to the Rules of the National Grain and Feed Association." While Nicollet was not a NGFA member, Andy Lorence Co. was a NGFA Active member in good standing at the time each contract was executed.

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

As required by the NGFA Arbitration Rules, Nicollet executed the contract for arbitration and returned it to the NGFA with the \$712 arbitration service fee, both of which were received on June 22, 2000.

The NGFA then sent a letter via U.S. Postal Service certified mail dated June 23, 2000 to defendant Andy Lorence Co. requesting execution of the contract for arbitration and payment of the arbitration service fee. The NGFA letter contained 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.]

The June 23 letter to Andy Lorence Co. was returned to the NGFA by the U.S. Postal Service based on Andy Lorence Co.'s refusal to accept service of the letter. Subsequently, on July 14, 2000, the NGFA re-sent the letter and enclosures via Federal Express<sup>2</sup> to Andy Lorence Co. While this package was verified as delivered on July 17, 2000, Andy Lorence Co. failed to return an executed copy of the contract for arbitration or the required arbitration service fee.

Nicollet submitted copies of the contracts between the parties, along with copies of other records showing shipments of the corn to Andy Lorence Co. In addition, Nicollet provided the NGFA with a copy of correspondence sent to it by Andy Lorence Co., in which the defendant indicated closure of its business.

<sup>1</sup> Copies of the contracts submitted by Nicollet showed shipment periods of Jan. 20 – Feb. 15, 2000 and Jan. 7 – Jan. 31, 2000.

<sup>2</sup> Federal Express tracking number 818905685988.

## The Decision

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

Andy Lorence Co. was a NGFA Active member in good standing at the time the contracts were made. 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."

Section 3(c)(4) of the NGFA Arbitration Rules further provides as follows: "A general reference to NGFA rules shall be deemed to incorporate all rules of this Association including the...Trade Rules and Arbitration Rules, and all definitions included in the Trade Rules shall apply under these Arbitration Rules, likewise."

Thus, the language in the parties' contracts bound both parties to arbitrate this matter under the NGFA Arbitration

Rules, even though the plaintiff was not a member.

The NGFA received no indication that the defendant intended to execute the 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. Moreover, the defendant clearly received the NGFA's notices.

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, Nicollet Farmers Exchange, and against the defendant, Andy Lorence Co.

## The Award

Therefore, it is ordered that:

- ◆ Nicollet Farmers Exchange is awarded a judgment against Andy Lorence Co. in the amount of \$42,460.06.
- ◆ Compound interest on the judgment shall accrue at the highest statutory rate on judgments applicable in Minnesota from May 26, 2000, until paid in full.

Dated: Aug. 2, 2000

National Grain and Feed Association

By: David C. Barrett Jr.  
National Secretary