



# Arbitration Decision

National Grain and Feed Association

February 26, 1998

## Arbitration Case Number 1790<sup>©</sup>

**Plaintiff: The Andersons Inc., Maumee, Ohio**

**Defendant: Jack Mikel, Etna Green, Ind.**

### Findings and Default Judgment

The Andersons, Inc., the plaintiff, submitted a request for arbitration with the National Grain and Feed Association (NGFA<sup>®</sup>) by letter dated Oct. 29, 1996, which was received by the NGFA on Nov. 5, 1996.

The plaintiff alleged that Jack Mikel, the defendant, failed to pay amounts owed to The Andersons as a result of cancellation<sup>1</sup> of the defendant-seller's "to arrive" cash contracts (Contract Numbers 24020 and 925326) with The Andersons. The Andersons claimed damages in the amount of \$40,939.05 for market differences between the contract price and replacement cost at the time of cancellation, plus 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 Nov. 7, 1996. Likewise, the defendant was notified of The Andersons' arbitration complaint by letter<sup>2</sup> from the NGFA dated Nov. 7, 1996. The NGFA's Nov. 7 letter was sent to Mr. Jack Mikel via U.S. Postal Service mail.

The Andersons, as required under the NGFA's Arbitration Rules, executed the NGFA Contract for Arbitration

and returned the executed contract along with the arbitration service fee of \$600, which was received by the NGFA on Nov. 15, 1996.

The defendant was sent a letter via U.S. Postal Service certified mail (Domestic Return Receipt No. P 427 590 667) dated Nov. 15, 1996, which requested that he execute the NGFA Contract for Arbitration and pay the arbitration service fee. U.S. Postal Service records verified that the Nov. 15 letter (and enclosure) was delivered and signed for by a "Jack Mikel" on Nov. 20, 1996. The defendant did not execute the NGFA Contract for Arbitration nor submit the arbitration service fee.

Subsequently, The Andersons Inc. filed a complaint to compel arbitration in the Michigan Circuit Court for the County of St. Joseph, Case No. 97-562-CZ. By a judgment order, dated Dec. 15, 1997, Judge James Noecker ordered Mr. Mikel to submit to arbitration. The NGFA, by a letter dated Jan. 7, 1998, sent another request (via U.S. Postal Service certified mail) to the defendant asking that he sign the NGFA Contract for Arbitration and pay the required arbitration service fee (Domestic Return Receipt No. Z 146 466 866 and signed for by a "Cindy Van Laeken" on Jan. 15, 1998). Mr. Mikel failed to respond in any manner.

<sup>1</sup> 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.

<sup>2</sup> All notices and correspondence were sent to defendant at the following address: 7610 W 850 North, Etna Green, IN 46524.

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The plaintiff has requested the entry of a default judgment against the defendant based upon Mr. Mikel's failure to comply with both the NGFA Arbitration Rules and the court order. The plaintiff included a sworn affidavit verifying the validity of documents submitted in the case and outlining the damages claimed. The documents submitted by the plaintiff disclosed that the defendant signed the underlying purchase contracts. Each contract contained the following language:

"Both parties agree: (a) this transaction is made in accordance with the Grain Trade Rules of the National

Grain and 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 & Feed Association, pursuant to its 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." The defendant did not 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, Jack Mikel.

### The Award

Therefore, it is ordered that:

The Andersons Inc. is awarded a judgment against Jack Mikel in the amount of \$59,487.09, itemized as follows:

\$40,939.05	Cancellation Invoice No. 64-5943
11,972.67	Delinquency charge calculated at 18 percent from June 21, 1996 (the date of the contract cancellation invoices) to Feb. 4, 1998. The per diem is \$20.19. See enclosed delinquency charge computation
600.00	NGFA arbitration fee previously paid by The Andersons Inc.
5,975.37	Attorney fees to compel arbitration
<u>\$59,487.09</u>	Total Judgment Requested as of Feb. 11, 1998

Compound interest on the judgment of \$59,487.09 shall accrue at the rate of 9 percent per annum from Feb. 11, 1998 until paid in full.

Dated: Feb. 19, 1998.

National Grain and Feed Association

By: David C. Barrett Jr.  
National Secretary