



CASE NUMBER 1865

Plaintiff: Cargill, Inc., Wayzata, Minn.

Defendant: Dennis Johnson, Comstock, Neb.

FACTUAL AND PROCEDURAL BACKGROUND

Cargill, Inc. (Cargill), the plaintiff, has requested the entry of a default judgment in the amount of \$42,121.21 against Dennis Johnson (Johnson), the defendant. The judgment is granted for the reasons set forth below.

Cargill filed its arbitration complaint pursuant to a letter dated December 3, 1997 and received by the National Grain and Feed Association (NGFA) on December 4, 1997. Cargill's arbitration complaint alleged, among other things, that Johnson had breached several grain contracts.¹ Cargill's arbitration complaint also clearly stated that each of the contracts contained provisions which required the parties to submit unresolved disputes to NGFA arbitration. Likewise, Cargill indicated that the contracts were signed by Johnson.

Acting upon Cargill's complaint, the NGFA prepared a *National Grain and Feed Association Contract for Arbitration* and sent it to Cargill for execution by letter dated December 12, 1997. The NGFA's records also show that Johnson, the defendant, was sent initial notice of Cargill's complaint by letter dated December 12, 1997 via U.S. Postal Service Certified Mail².

Cargill, as required by the NGFA Arbitration Rules, on December 30, 1997 executed the *National Grain and Feed Association Contract for Arbitration* and returned the executed contract along with the arbitration service fee of \$710.10 to the NGFA.

The NGFA then sent a letter via U.S. Postal Service Certified Mail³ dated January 5, 1998 to defendant, which requested execution of the *National Grain and Feed Association Contract for Arbitration* and payment of the arbitration service fee of \$710.10. Thereafter, NGFA sent a letter dated July 9, 1998 to defendant via U.S. Postal Service certified Mail⁴. Once again, the NGFA requested that defendant execute the arbitration contract and pay the required arbitration service fee. Past attempts to contact defendant were outlined in the letter.

On August 5, 1998, NGFA received a letter from the defendant which stated among other things that he was "unable to enter into arbitration" because quite frankly [I] don't have the \$710.00 to pay for it." Additionally, he stated, "I dispute contract 52204...it has not been signed by me, a copy of it is enclosed."

¹ Contract numbers 51952, 51953, 51954, 52800, 52801 and 52204 for a total of 54,724.41 bushels of No. 2 yellow corn.

² Notices to defendant were sent to: Dennis Johnson, P.O. Box 102, Comstock, NE 68828; The U.S. Postal Service Domestic Return Receipt "Article Number Z 338 919 944" shows that the letter was signed for on December 18, 1998, by a "Dennis Johnson."

³ The U.S. Postal Service Domestic Return Receipt "Article Number Z 146 466 855" shows that the letter was delivered on January 13, 1998 and received by a "Dennis Johnson."

⁴ The U. S. Postal Service Domestic Return Receipt "Article Number Z 092 304 240" shows that the letter was delivered on July 15, 1998 and signed for by a "Dennis Johnson."

DEFAULT JUDGMENT

Cargill filed its initial request for default judgment on September 21, 1998 and subsequently supplemented its request with copies of the grain contracts at issue in this case and amended the amount of damages to \$45,121.21. Each of those contracts contain the following provision as part of numbered item 1:

“The parties both agree that the sole remedy for resolution of all disagreements or disputes between the parties arising under this agreement shall be arbitration proceedings under NGFA Arbitration Rules. The decision and award determined by such arbitration shall be final and binding upon both parties.”

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

“If the contract in dispute between a member and 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 rules** [Emphasis added].”

Cargill was and is a NGFA Active member. Johnson is not a member. Nevertheless, the contractual documents clearly show that both parties agreed to submit any unresolved disputes to NGFA arbitration under the NGFA Arbitration Rules should an arbitration complaint be filed. Thus, the NGFA has jurisdiction over this case pursuant to Section 3(a)(2) of the NGFA Arbitration Rules.

The NGFA’s records show that defendant actually received notice of the claims asserted against him by Cargill. Thus, it appears that Johnson’s failure to proceed with the arbitration 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 such procedural decisions as are 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 *National Grain and Feed Association 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 defendant was obligated to comply and received notice of plaintiff’s claims. It, therefore, is appropriate to enter the requested award in favor of the plaintiff, Cargill, Inc., against the defendant, Dennis Johnson.

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. Cargill, Inc. is awarded a judgment against Dennis Johnson in the amount of \$45,121.21 for losses set forth in its arbitration complaint and the request for default judgment. Plaintiff also is granted an award of costs of \$710.10 for the arbitration service fee paid in this case.
2. Compound interest on the total judgment of \$45,831.31 shall accrue at the statutory rate on judgments in effect in Nebraska from December 3, 1997 until paid in full.

Dated: November 16, 1998

NATIONAL GRAIN AND FEED ASSOCIATION

By: David C. Barrett, Jr.
National Secretary