



Arbitration Decision

National Grain and Feed Association

February 11, 1999

Arbitration Case Number 1900

Plaintiff: The Andersons Inc., Maumee, Ohio

Defendant: Kenneth Darby, aka Ken Darby, Allegan, Mich.

Findings and Default Judgment

The Andersons Inc., the plaintiff, requested the entry of a default judgment in the amount of \$94,725.93 for costs of contract cancellation, as well as attorney fees, costs of collection and interest, against Kenneth Darby (Darby), the defendant. The judgment was granted for the reasons set forth herein.

The Andersons filed its arbitration complaint with the National Grain and Feed Association in a letter dated Jan. 13, 1998, which was received on Jan. 14, 1998. The Andersons' arbitration complaint alleged, among other things, that Darby had breached eight written and signed contracts¹ in which he had contracted to sell and deliver various quantities of corn and soybeans.

Acting upon The Andersons' complaint, the NGFA prepared a NGFA contract for arbitration and sent it to The Andersons for execution by letter dated Jan. 30, 1998. The NGFA's records also showed that the defendant was sent initial notice of The Andersons' complaint by letter dated Jan. 30, 1998 via U.S. Postal Service certified mail².

As required by the NGFA Arbitration Rules, The Andersons executed and returned the contract for arbitration by letter dated Feb. 5, 1998, accompanied by the arbitration service fee of \$974. Both were received by the NGFA on Feb. 11, 1998.

Subsequently, the NGFA sent a letter dated Feb. 11, 1998 to the defendant via U.S. Postal Service certified mail³, requesting execution of the contract for arbitration and payment of the arbitration service fee of \$974. However, the defendant failed to respond.

Therefore, the NGFA by letter dated May 26, 1998 sent another request⁴ to the defendant, advising him that the NGFA had not received the signed contract or the arbitration service fee, and outlining previous attempts to notify the defendant. The defendant was informed that, "[y]ou should sign the NGFA contract for arbitration and return it, along with the arbitration service fee of \$974, to this office by June 8, 1998; otherwise, a **default judgment may be entered against you.**" Another copy of the arbitration contract was enclosed. Again, the defendant failed to reply. Thereafter, the NGFA sent the unclaimed notifications to the defendant via Federal Express⁵. Federal Express is a recognized overnight delivery service pursuant to Section 10(c) of the NGFA Arbitration Rules.

On June 29, 1998, Darby spoke with the National Secretary requesting that the case be held in abeyance until July 13, 1998 pending discussions between the parties. The National

¹The corn contract numbers were 23840, 24829, 25932, 26153, 27459 and 27521. The soybean contract numbers were 25770 and 26975.

²All notices to the defendant were sent to: Kenneth Darby, 541 34th St., Allegan, MI 49010. The U. S. Postal Service domestic return receipt "article number Z015 220 928" showed at least three notices were made to the defendant to claim the initial letter. Ultimately, the U.S. Postal Service returned the letter to the NGFA marked as "unclaimed."

³The U.S. Postal Service domestic return receipt "article number Z 015 220 921" showed that the letter was delivered on Feb. 14, 1998 and was signed for by a "J. Darby."

⁴This request was sent via U.S. Postal Service domestic return receipt "article number Z092 304 203." It showed the letter was returned to the NGFA as "unclaimed" after three notification attempts were made to the defendant by the U.S. Postal Service.

⁵This request was sent via Federal Express airbill tracking number 4670688293. Federal Express reported the package as delivered on June 24, 1998 and signed for by a "K. Darby."

Secretary granted Darby's request. However, The Andersons, by letter dated Jan. 6, 1999, again requested that a default judgment be entered in its favor against Darby, stating that the parties had been unable to settle their dispute.

The NGFA's Jan. 14, 1999, correspondence⁶ advised the defendant that:

"The Andersons Inc. has requested that a default judgment be entered against you for failure to comply with the NGFA Arbitration Rules.

"You should sign the NGFA Contract for Arbitration and return it along with the arbitration service fee of \$974 to this office by Jan. 26, 1999.

"FAILURE TO EXECUTE THE CONTRACT AND/OR FAILURE TO PAY THE ARBITRATION SERVICE FEES MAY RESULT IN A DEFAULT JUDGMENT ENTERED AGAINST YOU WITHOUT FURTHER NOTICE 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."

The Andersons' motion for a default judgment included an affidavit attesting to the accuracy of the invoices and contract documents submitted in support of its motion. Each of the grain contracts also contained a written signature appearing to be that of the defendant and contained the following language in item number 13:

"Both parties agree:

"a. this transaction is made in accordance with the Grain Trade Rules of the National Grain & 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 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.]

The Andersons Inc. was and is a NGFA Active member. Kenneth Darby is not a member. Nevertheless, the contrac-

tual documents clearly showed that both parties agreed to submit any unresolved disputes to NGFA arbitration under the NGFA Arbitration Rules if an arbitration complaint was filed. Thus, the NGFA had jurisdiction over this case pursuant to Section 3(a)(2) of the NGFA Arbitration Rules.

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 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 notice of the plaintiff's claims. Therefore, it was appropriate to enter the requested award in favor of the plaintiff, The Andersons Inc., against the defendant, Kenneth Darby.

The Award

Therefore, it is ordered that:

The Andersons Inc. is awarded a judgment against Kenneth Darby itemized as follows:

\$94,725.93	Contract damages per Cancellation Invoice Number 64-7005
974.00	NGFA Arbitration Service Fee
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\$95,699.93	

Compound interest on the judgment amount of \$95,699.93 shall accrue at the rate of 18 percent per annum from Dec. 31, 1997 until paid in full.

Dated: Jan. 29, 1999

National Grain and Feed Association

By: David C. Barrett Jr.
National Secretary

⁶ The package was sent by the U.S. Postal Service domestic return receipt "article number Z 476 447 170."