



Arbitration Decision

National Grain and Feed Association

November 5, 1998

Arbitration Case Number 1924

Plaintiff: Southern Thumb Co-op Inc., Frankenmuth, Mich.

Defendant: Dennis Graves, Yale, Mich.

Findings and Default Judgment

Southern Thumb Co-op Inc. (Southern Thumb), the plaintiff, requested the entry of a default judgment in the amount of \$55,950.71 against Dennis Graves (Graves), the defendant. The judgment was granted for the reasons set forth in this decision.

Southern Thumb filed its arbitration complaint pursuant to a letter dated Dec. 23, 1997, which was received by the National Grain and Feed Association (NGFA) on Dec. 29, 1997. Southern Thumb's arbitration complaint alleged, among other things, that Graves breached several hedge-to-arrive grain contracts.¹ Southern Thumb's arbitration complaint also stated that each of the contracts contained provisions referencing the NGFA Trade Rules, which required the parties to submit unresolved disputes to NGFA arbitration. Likewise, Southern Thumb indicated that the contracts either were signed by Graves or were delivered to him as written confirmation of an oral contract between merchants, and were received without objection.

Acting upon Southern Thumb's complaint, the NGFA prepared a National Grain and Feed Association Contract for Arbitration and sent it to Southern Thumb for execution by letter dated March 2, 1998. The NGFA's records also showed that Graves, the defendant, was sent initial notice of Southern Thumb's complaint by letter dated March 2, 1998 via U.S. Postal Service certified mail².

As required by the NGFA Arbitration Rules, Southern Thumb executed the National Grain and Feed Association Contract for Arbitration and returned the executed contract with the arbitration service fee of \$780 to the NGFA.

The NGFA then sent a letter via U.S. Postal Service certified mail³ dated May 4, 1998 to the defendant, requesting execution of the National Grain and Feed Association Contract for Arbitration and payment of the arbitration service fee of \$780. Thereafter, the NGFA sent a letter dated May 29, 1998 to the defendant via Federal Express⁴. The letter outlined

¹ Contract number 50993, together with its related contract numbers 40151, 41358, 20512, 50718 and 50979; contract number 50979, together with its related contract numbers 40151 and 20618; contract number 51317, together with its related contract numbers 40350, 53530, 21239, 20512, 41359 and 40151; contract number 53209, together with its related contract numbers 21237, 20618, 50979, 41360, 40350, 41356, 40389, 53530, 21239, 20512, 41359, 40151 and 51317; contract number 53403, together with its related contract numbers 21238, 20619, 50980, 41357, 40389 and 51317; contract number 53529, together with its related contract numbers 21238, 20619 and 50980; contract number 53530, together with its related contract numbers 21239, 20512, 41359, 40151, 50718 and 50979; and contract number 53756, together with its related contract numbers 53309, 53913, 20806, 21546, 51343 and 40388.

² The initial notice was sent to the defendant at the following address supplied by the plaintiff: Dennis Graves, 5308 Main, No. 15, Lexington, MI 48450; The U.S. Postal Service returned the letter to the NGFA with a note that the forwarding time had expired and that the defendant's new address was: 10737 Fisher Road, Yale, MI 48097-2515.

³ The letter dated May 4, 1998 also was returned to the NGFA with a note that it was "undeliverable as addressed-forwarding order expired."

⁴ The Federal Express package was sent to the attention of Dennis Graves at 10737 Fisher Road, Yale, MI 48097-2515. Federal Express reported that the letter package was delivered on June 1, 1998 and signed for by an "E. Graves." Federal Express is a recognized overnight delivery service pursuant to Section 10(c) of the NGFA Arbitration Rules.

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past efforts to contact the defendant and requested execution of the National Grain and Feed Association Contract for Arbitration and payment of the arbitration service fee of \$780.

Southern Thumb filed its initial request for default judgment on Aug. 7, 1998. Subsequently, it supplemented its request with copies of the grain contracts at issue in this case. The contracts contained the following provision as part of numbered item 5:

“THIS TRADE IS MADE UNDER THE TRADE RULES OF THE NATIONAL GRAIN & FEED ASSOCIATION GOVERNING TRANSACTIONS IN GRAIN, EXCEPT AS MODIFIED HEREIN, AND BOTH PARTIES AGREE TO BE BOUND THEREBY. IF A DISPUTE ARISES THAT CANNOT BE SETTLED BETWEEN THE PARTIES TO THIS CONTRACT, BOTH PARTIES THEN AGREE TO ARBITRATE UNDER AND BE BOUND BY THE DECISION OF THE NATIONAL GRAIN & FEED ASSOCIATION ARBITRATION PROCEDURE.”

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].*”

Southern Thumb was and is a NGFA Active member. Graves is not a member. Nevertheless, the contractual 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. Con-

tractual language referencing the NGFA Trade Rules has been found to bind parties to arbitration even where 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).] 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 the defendant actually received notice of the claims asserted against him by Southern Thumb. Thus, it appeared that Graves’ failure to proceed with arbitration regarding Southern Thumb’s arbitration complaint 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 he 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, Southern Thumb Co-op Inc., against the defendant, Dennis Graves.

The Award

Therefore, it is ordered that:

▶ Southern Thumb Co-op Inc. is awarded a judgment⁵ against Dennis Graves in the amount of \$55,950.71 for losses set forth in its arbitration complaint and the request for default judgment. The plaintiff also is granted an award of costs of \$780 representing the arbitration service fee paid in this case.

▶ Compound interest on the total judgment of \$56,730.71 shall accrue at the statutory rate on judgments applicable in Michigan from Dec. 23, 1997 until paid in full.

Dated: Sept. 30, 1998

National Grain and Feed Association

By: David C. Barrett Jr.
National Secretary

⁵ Defendant was notified by letter dated September 21, 1998 that the “National Secretary intends to enter the requested default judgment against you on September 30, 1998 unless you show good cause to the contrary by noon (Eastern Time).” A copy of this (at that time) proposed decision was enclosed with the letter.