



National Grain and Feed Association

Arbitration Decision

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March 13, 2008

Arbitration Case Number 2181

Plaintiff: Cargill, Incorporated, Minneapolis, Minn.

Defendant: Ed Hornback, Ridge Farm, Ill.

Factual and Procedural Background

The plaintiff, Cargill, Incorporated, requested the entry of a default judgment in the amount of \$23,100.00, plus interest, against the defendant, Ed Hornback. The default judgment was granted for the reasons set forth below.

Cargill submitted an arbitration complaint dated August 20, 2007 to the National Grain and Feed Association (NGFA). The complaint alleged that Mr. Hornback failed to perform in accordance with a duly signed contract (designated as Cargill contract DANA-AH-40193), which provided for the delivery of 20,000 bushels of U.S. #2 yellow corn. The contract provided under "PURCHASE TERMS" as follows:

"NGFA Trade and Arbitration Rules. Unless otherwise provided herein, this Contract shall be subject to the Trade Rules of the National Grain and Feed Association (NGFA), which Trade Rules are incorporated herein by reference. **The parties agree that the sole forum for resolution of all disagreements or disputes between the parties arising under this Contract or relating to the formation of this Contract shall be arbitration proceedings before NGFA pursuant to NGFA Arbitration Rules.** The decision and award determined by such arbitration shall be final and binding upon both parties and judgement upon the award may be entered in any court having jurisdiction thereof. Copies of the NGFA Trade and Arbitration Rules are available from Buyer upon request and are available at www.ngfa.org." [Emphasis added].

Acting upon Cargill's complaint, the NGFA prepared an arbitration services contract and submitted it to Cargill for execution. By certified mail dated August 30, 2007, the NGFA also sent to Mr. Hornback a letter providing notice of these proceedings with copies of Cargill's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Mr. Hornback was signed for and received by him on September 1, 2007.

Upon receipt of the duly executed arbitration services contract

from Cargill, the NGFA then sent it with accompanying correspondence to Ed Hornback by certified mail on September 18, 2007. This mailing was returned as "unclaimed."

On October 9, 2007, the NGFA then resent the arbitration services contract with additional correspondence to Ed Hornback by Federal Express delivery. Federal Express confirmed that this mailing was delivered to Mr. Hornback on October 11, 2007.

After not receiving a response from Mr. Hornback, on November 1, 2007, the NGFA sent him another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered to Mr. Hornback on November 5, 2007. The NGFA's letters of September 18, 2007, October 9, 2007, and November 1, 2007 to Mr. Hornback specifically provided notice that Sections 5(c) and (d) of the NGFA Arbitration Rules required that the signed contract be returned within fifteen (15) days.

After still not receiving any response from Mr. Hornback, or any indication that a response was forthcoming, the NGFA sent yet another notice to Mr. Hornback on November 29, 2007 by Federal Express delivery. This notice further specifically stated as follows:

"NGFA Arbitration Rules 5(d) and (e) provide for the entry of a default judgment when a party fails to execute the arbitration contract and pay the service fee within fifteen (15) days. Based upon the lack of any response from you thus far, we must anticipate that you do not intend to respond. ***This is our last attempt to elicit a response from you. A default judgment may be entered against you at any time, which the Plaintiff may enforce in a court of law.***" [Emphasis in original].

Federal Express confirmed that this mailing was delivered to Ed Hornback on December 3, 2007.

The NGFA has yet to receive an executed arbitration services contract or any other response from Mr. Hornback, despite the repeated attempts by NGFA to contact him.

Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of contracts and by way of Cargill, Incorporated's status as a NGFA active member.

Cargill properly and in a timely manner filed its complaint under NGFA Arbitration Rules Section 5(a). Pursuant to Section 5(b), the NGFA then submitted an arbitration services contract to the parties. Section 5(d) states that, "it shall be the duty of both parties to complete the contract for arbitration within fifteen (15) days from the date the party receives the contract from the National Secretary." Cargill properly executed and returned the arbitration services contract. Ed Hornback refused to comply with the NGFA Arbitration Rules, and refused to respond to any arbitration-related mailings.

NGFA Arbitration Rule Section 5(e) provides for the following:

"Where a party fails to pay the arbitration service fee and/or fails to execute the contract for arbitration, the

National Secretary may without further submissions by the parties enter a default judgment or such other relief as the National Secretary deems appropriate."

As it appears that Mr. Hornback made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary finds that entry of default judgment against Ed Hornback is proper and warranted.

Therefore, on February 14, 2008, the NGFA entered a default judgement against the defendant. The defendant was also advised that NGFA Arbitration Rule Section 5(e) sets forth the requirements and conditions under which, "[a]ny party against whom a default judgment has been entered under this provision may apply for vacation of the default judgment within fifteen (15) days of entry of the default judgment." In this case, the defendant did not apply to vacate the default judgement pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. Cargill, Incorporated is awarded judgment against Ed Hornback for \$23,100.00.
2. Interest on the judgment shall accrue at the statutory rate available for judgments in the applicable jurisdiction from this date until paid in full.

Dated: February 14, 2008

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary