



National Grain and Feed Association

Arbitration Decision

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September 15, 2008

Arbitration Case Number 2221

Plaintiff: Murphy-Brown LLC, Rose Hill, N.C.

Defendant: Brad Gurley Farms and J. Isaac Gurley Farms Inc., Goldsboro, N.C.

Factual and Procedural Background

The plaintiff, Murphy-Brown LLC (Murphy-Brown), requested the entry of a default judgment in the amount of \$60,840.95 against the defendant, Brad Gurley Farms and J. Isaac Gurley Farms (Gurley Farms). The default judgment was granted for the reasons set forth below.

Murphy-Brown submitted an arbitration complaint dated Feb. 26, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Gurley Farms failed to fully perform on duly signed Murphy-Brown contract nos. 388992, 412325 and 412345 for delivery of corn.

The contracts contained the following provision under “**Arbitration:**”

“The parties to this contract agree that the sole remedy for resolution of any and all disagreements or disputes arising under this contract shall be through arbitration proceedings before the National Grain and Feed Association (NGFA) under NGFA Arbitration Rules. The decision and award determined through such arbitration shall be final and binding upon the buyer and seller. Judgement upon the arbitration award may be entered and enforced in any court having jurisdiction thereof.”

Acting upon Murphy-Brown’s complaint, the NGFA prepared an arbitration services contract and submitted it to Murphy-Brown for execution. By certified mail dated March 5, 2008, the NGFA also sent to Gurley Farms a letter providing notice of these proceedings with copies of Murphy-Brown’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. This certified mailing was refused.

Upon receipt of the duly executed arbitration services contract

from Murphy-Brown, the NGFA then sent it with accompanying correspondence and a copy of the initial March 5, 2008 mailing to Gurley Farms by FedEx mail on March 20, 2008. Federal Express confirmed that this mailing to Gurley Farms was delivered on March 24, 2008.

On May 14, 2008, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on May 16, 2008. The NGFA’s letters of March 20, 2008 and May 14, 2008 to Gurley Farms specifically provided notice that Sections 5(c) and (d) of the NGFA Arbitration Rules required that the signed contract be returned within 15 days.

After still not receiving an appropriate response from Gurley Farms, the NGFA sent yet another notice to Gurley Farms on June 17, 2008 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. At this time, 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 Gurley Farms on June 19, 2008.

The NGFA has yet to receive an executed arbitration services contract from Gurley Farms, despite the repeated attempts by NGFA to contact them.

Default Judgment

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

Murphy-Brown 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." Murphy-Brown properly executed and returned the arbitration services contract. Gurley Farms refused to comply with the NGFA Arbitration Rules.

NGFA Arbitration Rules 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 Brad Gurley Farms and J. Isaac Gurley Farms 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 Brad Gurley Farms and J. Isaac Gurley Farms is proper and warranted.

Therefore, on Aug. 6, 2008, the NGFA entered a default judgement against the defendant. The defendant also was advised that NGFA Arbitration Rules 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. Murphy-Brown LLC is awarded judgment against Brad Gurley Farms and J. Isaac Gurley Farms for \$60,840.95.
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: Aug. 6, 2008

NATIONAL GRAIN AND FEED ASSOCIATION

By: **Charles M. Delacruz**
National Secretary