



National Grain and Feed Association

Arbitration Decision

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July 12, 2012

Arbitration Case Number 2596

Plaintiff: DeBruce Feed Ingredients Inc., Kansas City, Mo.

Defendant: Piggott Farms LTD, Watford, Ont.

Factual and Procedural Background

The plaintiff, DeBruce Feed Ingredients Inc. (DeBruce), requested the entry of a default judgment in the amount of \$277,905.46 against the defendant, Piggott Farms LTD (Piggott Farms). The default judgment was granted for the reasons set forth below.

DeBruce submitted an arbitration complaint dated Oct. 17, 2011 to the National Grain and Feed Association (NGFA). The complaint alleged that Piggott Farms failed to perform on duly signed DeBruce contract no. PAL3064725 for delivery of alfalfa.

The contract stated: "Governing Trade Rules: NAT'L GRAIN & FEED ASSN" (Emphasis in original). The contract also contained the following provision under "ADDITIONAL TERMS AND CONDITIONS – SALE CONTRACT CONFIRMATION":

4. Unless otherwise provided herein, this Contract shall be subject to the National Grain and Feed Association, the American Fats and Oils Association, the National Oilseed Processors Association, the American Dehydrators Association, the Canadian Oilseed Processors Association and the National Cottonseed Products Association (Association(s)) Trade Rules, which Trade Rules are incorporated herein by reference. If more than one Association purports to govern a given commodity, the association appearing later in the list shall apply. 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 Association pursuant to Association Arbitration Rules. The decision and award determined by such arbitration shall be final and binding upon both parties and judgment upon the award may be entered in any court having jurisdiction thereof. Copies of the Association Trade and Arbitration Rules are available from Seller

upon request. This Contract is governed by and is to be interpreted pursuant to the laws of the State of Missouri without taking into account its choice of law rules except that the Association Trade Rules supersede state law. Buyer hereby submits to and consents to the jurisdiction of the Courts for the State of Missouri and/or the federal courts for the District of Missouri except that the provisions concerning arbitration control over this provision. In the event of a contradiction between the terms set forth in this Contract and the Association Trade Rules the terms set forth herein shall control. **The parties hereby waive trial by jury in any and all litigation related to or arising out of this contract or the transactions contemplated hereby.** [Emphasis in original.]

Acting upon DeBruce's complaint, NGFA prepared an arbitration services contract and submitted it to DeBruce for execution. By certified mail dated Oct. 28, 2011, NGFA also sent to Piggott Farms a letter providing notice of these proceedings with copies of DeBruce's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Piggott Farms was signed for and received on Nov. 7, 2011.

On Nov. 14, 2011, Scott Piggott left a voicemail for NGFA. NGFA returned the call the same day and left a voicemail for Mr. Piggott. NGFA did not hear further from him in any form.

Upon receipt of the duly executed arbitration services contract from DeBruce, NGFA then sent it with accompanying correspondence to Piggott Farms by Federal Express delivery on Nov. 23, 2011. This mailing was returned to NGFA by Federal Express. NGFA obtained an alternative address for the defendant, and on Feb. 22, 2012, the mailing was resent to Piggott Farms by Federal Express

delivery. Federal Express confirmed that this mailing was delivered on Feb. 24, 2012.

On April 2, 2012, NGFA sent to Piggott Farms another letter by Federal Express delivery to a different address. Federal Express confirmed that this mailing was delivered on April 4, 2012. NGFA's letters of February 22 and April 2, 2012 to Piggott Farms 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 an appropriate response from Piggott Farms, or any indication that a response was forthcoming, NGFA sent yet another notice to Piggott Farms on May 10, 2012 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 Piggott Farms on May 14, 2012.

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

Default Judgment

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

DeBruce 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." DeBruce properly executed and returned the arbitration services contract. Piggott Farms refused to comply with the NGFA Arbitration Rules, and refused to respond to any requests from NGFA for the executed contract.

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 appeared that Piggott Farms made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary found that entry of default judgment against Piggott Farms was proper and warranted.

Therefore, on June 15, 2012, NGFA entered a default judgment 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 pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. DeBruce Feed Ingredients Inc. is awarded judgment against Piggott Farms LTD for \$277,905.46.
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. This award is not intended to preclude the plaintiff from pursuing an additional award for interest, legal fees or costs in a court of law.

Dated: June 15, 2012

NATIONAL GRAIN AND FEED ASSOCIATION

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