



National Grain and Feed Association

Arbitration Decision

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August 21, 2012

Arbitration Case Number 2618

Plaintiff: Heritage Cooperative, West Mansfield, Ohio

Defendant: Jeff W. Anderson, Mechanicsburg, Ohio

Factual and Procedural Background

The plaintiff, Heritage Cooperative (Heritage), requested the entry of a default judgment in the amount of \$18,800 against the defendant, Jeff W. Anderson (Anderson). The default judgment is granted for the reasons set forth below.

Heritage submitted an arbitration complaint dated Feb. 3, 2012 to the National Grain and Feed Association (NGFA). The complaint alleged that Anderson failed to perform on duly signed Heritage contract no. 2711668 for delivery of #2 yellow corn.

The contract contained the following provision:

5. Buyer and seller consent and 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") pursuant to NGFA arbitration rules. The decision and award determined through such arbitration shall be final and binding upon buyer and seller. Judgement upon the arbitration award may be entered and enforced in any court having proper jurisdiction. (Copies of NGFA arbitration rules are available from NGFA, 1201 New York Ave. NW., Suite 830, Washington, DC 20005).

Acting upon Heritage's complaint, NGFA prepared an arbitration services contract and submitted it to Heritage for execution. By certified mail dated Feb. 24, 2012, NGFA also sent to Anderson a letter providing notice of these proceedings with copies of Heritage's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. This mailing was returned unclaimed.

Upon receipt of the duly executed arbitration services contract

from Heritage, NGFA then sent it with accompanying correspondence along with the Feb. 24, 2012 mailing to Anderson by FedEx mail on March 30, 2012. Federal Express confirmed that this mailing to Anderson was signed for and received on April 3, 2012.

On May 10, 2012, NGFA sent to Anderson another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on May 14, 2012. NGFA's letters of March 30 and May 10, 2012 to Anderson 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 Anderson, or any indication that a response was forthcoming, NGFA sent yet another notice to Anderson on June 13, 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 Anderson on June 15, 2012.

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

Default Judgment

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

Heritage 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." Heritage properly executed and returned the arbitration services contract. Anderson 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 appears that Anderson 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 Anderson is proper and warranted.

Therefore, on July 18, 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. Heritage Cooperative is awarded judgment against Jeff W. Anderson for \$18,800.
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: July 18, 2012

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary