



National Grain and Feed Association Arbitration Decision

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October 17, 2013

CASE NUMBER 2680

Plaintiff: Cargill, Inc., Minneapolis, Minn.

Defendant: Logan Van Klootwyk, Knoxville, Iowa

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Cargill, Inc. (Cargill), requested the entry of a default judgment in the amount of \$174,507.46 against the defendant, Logan Van Klootwyk (Klootwyk). The default judgment is granted for the reasons set forth below.

Cargill submitted an arbitration complaint dated March 19, 2013 to the National Grain and Feed Association (NGFA). The complaint alleged that Klootwyk failed to perform on duly signed Cargill contract nos. 115031, 115035, 115067, 115068 and 121649 for U.S. No. 2 yellow corn.

Each contract stated, "**RULES TO GOVERN:** NGFA." [Emphasis in original.] Under the "**PURCHASE TERMS**" each contract further provided:

1. 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 judgment 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.

Acting upon Cargill's complaint, NGFA prepared an arbitration services contract and submitted it to Cargill for execution. By certified mail dated April 12, 2013, NGFA also sent to Klootwyk 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 Klootwyk was signed for and received on April 15, 2013.

Upon receipt of the duly executed arbitration services contract from Cargill, NGFA then sent the arbitration services contract with accompanying correspondence to Klootwyk by certified mail on May 1, 2013. The certified mail return receipt confirmed that this mailing to Klootwyk was signed for and received on May 6, 2013.

On June 17, 2013, NGFA sent to Klootwyk another letter by certified mail. The certified mail return receipt confirmed that this mailing was delivered on June 24, 2013. NGFA's letters of May 1 and June 17, 2013 to Klootwyk 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 executed arbitration services contract from Klootwyk, NGFA sent a notice to Klootwyk on August 14, 2013 by certified mail. 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.]

The certified mail return receipt confirmed that this mailing was delivered to Klootwyk on Aug. 17, 2013.

DEFAULT JUDGMENT

The NGFA established jurisdiction over this matter pursuant to the express terms of the contracts and by way of Cargill'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. Klootwyk 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.

Therefore, on Sept. 11, 2013, 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. Cargill, Inc. is awarded judgment against Logan Van Klootwyk for \$174,507.46.
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: September 11, 2013

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary