



National Grain and Feed Association Arbitration Decision

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July 24, 2015

CASE NUMBER 2732

**PLAINTIFF: LANSING CANADA ULC
OVERLAND PARK, KS**

**DEFENDANT: C2 FARMS C/O MICHAEL CARTER
PROVOST, ALBERTA, CANADA**

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Lansing Canada ULC (Lansing), requested the entry of a default judgment in the amount of 163,351.96 USD (178,315 CAD converted by the plaintiff at a rate of 1.0916) against the defendant, C2 Farms c/o Michael Carter (C2). The default judgment is granted for the reasons set forth below.

Lansing submitted an arbitration complaint dated August 8, 2014 to the National Grain and Feed Association (NGFA). The complaint alleged that C2 failed to perform on two wheat contracts with Lansing (contact nos. 4088 and 4089).

Both contracts stated in paragraph 2 under “Contract Terms and Conditions”:

The Contract is subject to the customary trade rules, as established and governed by the appropriate exchange, board, or association designated on the face hereof, of the market to which the product is shipped. This Contract is also subject to the Trade Rules of the National Grain and Feed Association (“NGFA”). Further, any disputes or controversies arising out of this Contract shall be arbitrated by the NGFA pursuant to its Arbitration Rules. Buyer and seller agree that judgment may be entered upon any arbitration award in any Court of competent jurisdiction.

Acting upon Lansing’s complaint, NGFA prepared an arbitration services contract and submitted it to Lansing for execution. By Federal Express delivery dated September 17, 2014, NGFA also sent to C2 a letter providing notice of these proceedings with copies of Lansing’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. Federal Express delivery confirmed that this mailing to C2 was received on September 19, 2014.

Upon receipt of the duly executed arbitration services contract from Lansing, NGFA then sent it with accompanying correspondence to C2 by Federal Express delivery on October 20, 2014. Federal Express delivery confirmed that this mailing to C2 was received on October 23, 2014.

On December 2, 2014, NGFA sent to C2 another letter by Federal Express delivery. Federal Express delivery confirmed this mailing was delivered on December 5, 2014. NGFA’s letters of October 20 and

December 5, 2014 to C2 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 C2, or any indication that a response was forthcoming, NGFA sent yet another notice to C2 on January 9, 2015 by Federal Express Delivery. This notice further specifically stated as follows:

NGFA Arbitration Rules 2(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 Delivery confirmed that this mailing was delivered to C2 on January 13, 2015.

On February 10, 2015, C2, through its counsel, notified NGFA that C2 farms did not agree to participate in the NGFA Arbitration process. On February 18, 2015, Lansing provided NGFA with copies of the fully executed contracts. On March 31, 2015, via facsimile and first class mail, NGFA replied to C2's counsel reiterating that a default judgment would be appropriate in this case and providing copies of the fully executed contracts between C2 and Lansing.

By telephone on April 20, 2015, C2's counsel requested additional copies of the file materials and previous correspondences sent in this case. NGFA complied with C2's request on May 7, 2015.

NGFA has yet to receive an executed arbitration services contract from C2 or further communication from C2 despite repeated attempts by NGFA.

DEFAULT JUDGMENT

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

Lansing properly and in a timely manner filed its complaint under NGFA Arbitration Rule 2(A). Pursuant to Rule 2(B), NGFA then submitted an arbitration services contract to the parties. Rule 2(D) states that, "Each party must return the completed arbitration services contract within 15 days from the date the party receives it from the NGFA Secretary." Lansing properly executed and returned the arbitration services contract. C2 refused to comply with the NGFA Arbitration Rules, and refused to respond to any requests from NGFA for the executed contract.

NGFA Arbitration Rule 2(E) provides for the following:

Where a party fails to execute the arbitration services contract or pay the arbitration services fee, the NGFA Secretary may without further submissions by the parties enter a default judgment or such other relief as the NGFA Secretary deems appropriate.

As it appears that C2 has made a conscious decision to disregard these arbitration proceedings, pursuant to Rule 2(E) of the NGFA Arbitration Rules, the NGFA Secretary finds that entry of default judgment against C2 is proper and warranted.

NGFA Arbitration Rule 2(E) also sets forth the requirements and conditions under which, “[a]ny party against whom a default judgment has been entered may apply to vacate the default judgment within 15 days of entry of the default judgment.”*

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. Lansing Canada ULC is awarded judgment against C2 Farms c/o Michael Carter for 163,351.96 USD (178,315 CAD converted by the plaintiff at a rate of 1.0916).
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: May 29, 2015

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

*On May 29, 2015, NGFA entered the default judgment against the defendant. The defendant was advised regarding the procedures for applying to vacate the default judgment, but the defendant did not apply to vacate the default judgment.