



National Grain and Feed Association Arbitration Decision

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June 5, 2018

CASE NUMBER 2831

**PLAINTIFF: GUARDIAN ENERGY, LLC
JANESVILLE, MN**

**DEFENDANT: THOMAS HAGER, AKA TOM HAGER & LORI HAGER
SAINT PETER, MN**

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Guardian Energy, LLC (“Guardian”), requested the entry of a default judgment in the amount of \$138,903.62 against the defendants, Thomas Hager, *aka* Tom Hager & Lori Hager (collectively, “Hagers”). The default judgment is granted for the reasons set forth below.

Guardian submitted an arbitration complaint dated November 22, 2017, to the National Grain and Feed Association (NGFA). The complaint alleged that the Hagers breached express provisions in contracts J055322 and J055462 for 30,000 bushels of # 2 yellow corn.

Both of the contracts were duly signed and stated:

This contract is subject to the National Grain and Feed Association Trade Rules and the National Grain and Feed Association Arbitration Rules. Any dispute or controversy between the parties arising out of or relating to the Agreement will be arbitrated in accordance with the proceedings under the National Grain and Feed Association Arbitration Rules. The arbitration will be the exclusive dispute resolution method under this Agreement.

Guardian is a member of NGFA thereby satisfying the terms of the arbitration clause in the contracts.

Acting upon Guardian’s complaint, NGFA prepared an arbitration services contract and submitted it to Guardian for execution. By Federal Express dated December 11, 2017, NGFA also sent to the Hagers a letter providing notice of these proceedings with copies of Guardian’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. Federal Express confirmed that this mailing to the Hagers was delivered on December 14, 2017.

Upon receipt of the duly executed arbitration services contract from Guardian, NGFA then sent it with accompanying correspondence to the Hagers by Federal Express on January 08, 2018. Federal Express confirmed that this mailing to the Hagers was delivered on January 11, 2018.

On February 16, 2018, NGFA sent to the Hagers another letter by Federal Express. Federal Express confirmed this mailing was delivered on February 21, 2018. NGFA's letters of January 11 and February 21, 2018 to the Hagers specifically provided notice that Rule 2(E) of the NGFA Arbitration Rules required that the signed contract be returned within fifteen (15) days.

After still not receiving any response from the Hagers, or any indication that a response was forthcoming, NGFA sent yet another notice to the Hagers on April 18, 2018 by Federal Express. 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 confirmed that this mailing was delivered to the Hagers on April 23, 2018.

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

DEFAULT JUDGMENT

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

Guardian 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." Guardian properly executed and returned the arbitration services contract. Hagers refused to comply with the NGFA Arbitration Rules, and participate in the NGFA Arbitration Process.

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 the Hagers 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 the Hagers 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. Guardian Energy, LLC is awarded judgment against Thomas Hager, *aka* Tom Hager & Lori Hager, for \$138,903.62.
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 8, 2018

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

* On May 8, 2018, 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.