



National Grain and Feed Association Arbitration Decision

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July 10, 2015

CASE NUMBER 2647

PLAINTIFF: CARGILL, INCORPORATED, WAYZATA, MN

DEFENDANT: JOHN GOCHENOUR, LOGAN, IA

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Cargill, Incorporated (Cargill), requested the entry of a default judgment in the amount of \$186,250.00 plus interest, fees and charges from the time of cancellation against the defendant, John Gochenour (Gochenour). The default judgment is granted for the reasons set forth below.

Cargill's original complaint against Gochenour, filed on February 7, 2012, was stayed because of bankruptcy proceedings. On June 18, 2014, Cargill requested the arbitration proceedings against Gochenour be recommenced because the bankruptcy proceedings were dismissed. The complaint alleged that Gochenour failed to deliver on multiple contracts for corn to Cargill's facility in Blair, NE

Each duly signed contract stated in paragraph 1 of the Purchase Terms:

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 of 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 July 10, 2014, NGFA also sent to Gochenour 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. On August 5, 2015, NGFA resent this mailing along with the duly executed arbitration services contract from Cargill to Gochenour. The certified mail receipt confirmed that this mailing to Gochenour was received on August 8, 2014.

On October 1, 2014, NGFA sent to Gochenour another letter by Federal Express Delivery. Federal Express Delivery confirmed this mailing was delivered on October 6, 2014. NGFA's letters of August 5 and October 1, 2014 to Gochenour 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 Gochenour, or any indication that a response was forthcoming, NGFA sent yet another notice to Gochenour on October 31, 2014 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 Gochenour on November 5, 2014.

NGFA has yet to receive an executed arbitration services contract or any other communication from Gochenour, despite the repeated attempts by NGFA to contact Gochenour.

DEFAULT JUDGMENT

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 Rule 2(A). Pursuant to Rule 2(B), the 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." Cargill properly executed and returned the arbitration services contract. Gochenour 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 Gochenour 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 Gochenour 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. Cargill, Incorporated is awarded judgment against John Gochenour for \$186,250.00.
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