



National Grain and Feed Association Arbitration Decision

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July 10, 2015

CASE NUMBER 2744

PLAINTIFF: ARCHER DANIELS MIDLAND COMPANY, DECATUR, IL

DEFENDANT: BEE AGRICULTURAL COMPANY, BEEVILLE, TX

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Archer Daniels Midland Company (ADM), requested the entry of a default judgment in the amount of \$1,318,901.54 against the defendant, Bee Agricultural Company (Bee Ag). The default judgment is granted for the reasons set forth below.

ADM submitted an arbitration complaint dated December 8, 2014 to the National Grain and Feed Association (NGFA). The complaint alleged that Bee Ag entered into contract 072413 for the delivery of 700,000 bushels of #2 sorghum to ADM and contract 720259 for the purchase of 450,327.15 bushels of #5 corn (as-is) from ADM. Bee Ag defaulted on both contracts by delivering only 65,797.16 bushels under contract 072413 and for nonperformance of payment for grain already shipped under contract 720259, as well as failing to provide adequate assurance for the remaining 150,327.14 bushels.

Both of the contracts, under paragraph 22 of the “Standard Terms and Conditions” stated:

Seller and Buyer Agree That All Disputes And Controversies Of Any Nature Whatsoever Between Them With Respect To This Contract, Or Any Other Commodity Contract Between The Parties, Must Be Arbitrated According To The Arbitration Rules Of The NGFA, And That The Decision And Award Determined There Under Will Be Final And Binding On Seller And Buyer.

Acting upon ADM’s complaint, NGFA prepared an arbitration services contract and submitted it to ADM for execution. By Federal Express delivery dated December 29, 2014, NGFA also sent to Bee Ag a letter providing notice of these proceedings with copies of ADM’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. Federal Express delivery confirmed that this mailing to Bee Ag was signed for and received on January 2, 2015.

Upon receipt of the duly executed arbitration services contract from ADM, NGFA then sent it with accompanying correspondence to Bee Ag by Federal Express delivery on January 14, 2015. Federal Express delivery confirmed that this mailing to Bee Ag was signed for and received on January 19, 2015.

NGFA’s letter of January 14, 2015 to Bee Ag specifically provided notice that NGFA Arbitration Rule 2 required that the signed contract be returned within fifteen (15) days.

On January 21, 2015, a representative of Bee Ag contacted NGFA by telephone and stated Bee Ag did not dispute the claim.

NGFA sent yet another notice to Bee Ag on April 28, 2015 by certified mail. 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].

The certified mail receipt confirmed that this mailing was delivered to Bee Ag on May 4, 2015.

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

DEFAULT JUDGMENT

NGFA established jurisdiction over this matter pursuant to the express terms of the contracts and by way of ADM's and Bee Ag's status as NGFA active members at the relevant times.

ADM 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." ADM properly executed and returned the arbitration services contract. Bee Ag 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.

Also, under NGFA Bylaws Article II, Section 3(f), "each NGFA Member agrees to subscribe to, conform with and be bound by the NGFA Bylaws; and in the case of Active Members, the NGFA's Trade Rules (where applicable), Arbitration Rules and Code of Ethics."

As it appears that Bee Ag made a conscious decision to disregard these arbitration proceedings, pursuant to the NGFA Arbitration Rules and the NGFA Bylaws, the NGFA Secretary finds that entry of default judgment against Bee Ag 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. Archer Daniels Midland Company is awarded judgment against Bee Ag for \$1,318,901.54.
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: June 17, 2015

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

*On June 17, 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