



National Grain and Feed Association Arbitration Decision

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December 15, 2015

CASE NUMBER 2760

PLAINTIFF: MICHIGAN AGRICULTURAL COMMODITIES
LANSING, MI

DEFENDANT: LYNN WALTON
IMLAY CITY, MI

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Michigan Agricultural Commodities (MAC), requested the entry of a default judgment in the amount of \$15,060.42 against the defendant, Lynn Walton (Walton). The default judgment is granted for the reasons set forth below.

MAC submitted an arbitration complaint dated May 12, 2015 to the National Grain and Feed Association (NGFA). The complaint alleged that Walton failed to perform under contract no. 244160 for 100,000 bushels of U.S. No. 2 corn. Walton duly signed contract 244160. The contract stated above Walton's signature line as follows:

IMPORTANT NOTICE: The parties' contract also is subject to the term and conditions set forth on page 2 (which may be the reverse side hereof) including but not limited to arbitration of any disputes. The terms set in this contract confirmation represent the complete terms of the agreement between the parties. The terms of the contract cannot be altered or amended without the express consent of the Buyer. Any alteration or amendment agreed upon between the parties must be immediately confirmed by both in writing.

The contract also stated in the first paragraph under the Continuation of Purchase Confirmation Terms:

NGFA® TRADE RULES AND ARBITRATION TO APPLY: Except as otherwise provided herein, this contract shall be subject to the Trade Rules of the National Grain and Feed Association (NGFA), which are incorporated herein. If this contract involves edible beans, the Michigan Bean Shippers Trade Rules shall apply except that NGFA arbitration shall apply as set forth herein. The parties agree that the sole remedy for resolution of any and all disagreements or disputes arising under or related to this contract shall be through arbitration proceedings before the NGFA pursuant to the NGFA® Arbitration Rules. The decision and award determined through such arbitration shall be final and binding upon the parties. Judgment upon the arbitration award may be entered and enforced in any court having jurisdiction thereof. (Copies of the NGFA® Trade Rules and Arbitration Rules are available upon request and also from the National Grain and Feed Association: Telephone: 202-289-0873; Website: <http://www.ngfa.org>). The parties agree that any arbitration conducted hereunder shall be governed by the Federal Arbitration Act, 9 United States Code § 1-16, as now existing or hereinafter amended. This contract shall otherwise be governed by, and construed in accordance with, the laws of the State of Michigan (with the exception of the State of Michigan's conflict of laws statutes or caselaw).

Acting upon MAC's complaint, NGFA prepared an arbitration services contract and submitted it to MAC for execution. By certified mail dated May 29, 2015, NGFA also sent to Walton a letter providing notice of these proceedings with copies of MAC's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules.

Upon receipt of the duly executed arbitration services contract from MAC, NGFA then sent it with accompanying correspondence to Walton by certified mail on June 8, 2015.

The United States Postal Service indicated it left notification for Walton that the May 29 and June 8, 2015, mailings were available for pickup on June 2 and June 12, 2015, respectfully. However, both mailings were returned to NGFA as unclaimed. NGFA then sent a letter to Walton by Federal Express Delivery with copies of all documents previously sent (notice of proceedings, MAC's complaint and attachments, NGFA Trade Rules and Arbitration Rules and the duly executed arbitration services contract from MAC). Federal Express Delivery confirmed that this mailing was delivered on August 14, 2015.

On September 14, 2015, NGFA sent to Walton another letter by Federal Express Delivery. Federal Express Delivery confirmed this mailing was delivered on September 17, 2015. NGFA's letters of June 8 and September 14, 2015 to Walton specifically provided notice that Arbitration Rule 2 of the NGFA Arbitration Rules required that the signed contract be returned within fifteen (15) days.

After still not receiving any response from Walton, or any indication that a response was forthcoming, NGFA sent yet another notice to Walton on October 14, 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 Walton on October 19, 2015.

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

DEFAULT JUDGMENT

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

MAC 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." MAC properly executed and returned the arbitration

services contract. Walton 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 Walton 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 Walton 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. Michigan Agricultural Commodities is awarded judgment against Lynn Walton for \$15,060.42.
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: November 9, 2015

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

*On November 9, 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.