



National Grain and Feed Association Arbitration Decision

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January 21, 2022

CASE NUMBER 2898

PLAINTIFF: PARRISH & HEIMBECKER, LTD., WINNIPEG, MANITOBA, CANADA

DEFENDANT: RAM CATTLE FEEDERS, CARSELAND, ALBERTA, CANADA

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Parrish & Heimbecker, Ltd. (P&H), requested the entry of a default judgment in the amount of 101,087.57 USD against the defendant, RAM Cattle Feeders (RAM Cattle). The default judgment is granted for the reasons set forth below.

P&H submitted an arbitration complaint dated May 12, 2021, to the National Grain and Feed Association (NGFA). The complaint alleged that RAM Cattle failed to perform on contract 286918 for 1,992.410 metric tons of wheat.

The contract was duly executed and agreed upon by both parties and stated “Rules: National Grain & Feed Assoc”. The contract also stated under paragraph 12 of the terms and conditions as follows:

This Contract shall be governed by the laws of the Province in which it was written and the laws of Canada as may be applicable therein except where an issue may be decided under the National Grain and Feed Association Grain Trade Rules. Any claim relating to this contract shall be settled by arbitration under the National Grain and Feed Association Arbitration Rules as are in effect at the date of this agreement. The parties agree to submit to arbitration. Judgement upon any arbitration award may be entered in any court or tribunal of competent jurisdiction. ...

Acting upon P&H’s complaint, NGFA prepared an arbitration services contract and submitted it to P&H for execution. By Federal Express dated May 28, 2021, NGFA also sent to RAM Cattle a letter providing notice of these proceedings with copies of P&H’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. Federal Express confirmed that this mailing to RAM Cattle was delivered on June 1, 2021.

Upon receipt of the duly executed arbitration services contract from P&H, NGFA then sent it to RAM Cattle with accompanying correspondence dated June 11, 2021, by Federal Express. Federal Express confirmed that this mailing to RAM Cattle was delivered on July 5, 2021.

On August 3, 2021, NGFA sent to RAM Cattle another letter by Federal Express. Federal Express confirmed this mailing was delivered on August 11, 2021. NGFA’s letters of June 11 and August 3, 2021, to RAM Cattle 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 RAM Cattle, or any indication that a response was forthcoming, NGFA sent yet another notice to RAM Cattle on August 31, 2021, 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 RAM Cattle on September 7, 2021.

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

DEFAULT JUDGMENT

NGFA established jurisdiction over this matter pursuant to the express terms of the contract and by way of P&H's status as an NGFA active member.

P&H 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." P&H properly executed and returned the arbitration services contract. RAM Cattle 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 RAM Cattle 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 RAM Cattle 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. Parrish & Heimbecker, Ltd. is awarded judgment against RAM Cattle Feeders for 101,087.57 USD

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 17, 2021*

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

* On November 17, 2021, 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.