



National Grain and Feed Association

Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

June 14, 2001

Arbitration Case Number 2000

Plaintiff: Lansing Grain Co., Overland Park, Kan.

Defendant: Waco Feed and Grain, Waco, Mo.

Factual and Procedural Background

Lansing Grain Co. (Lansing), the plaintiff, requested the entry of a default judgment in the amount of \$19,950, plus interest, against Waco Feed and Grain (Waco), the defendant. The judgment was granted for the reasons set forth below.

Lansing filed an arbitration complaint pursuant to a letter received by the National Grain and Feed Association (NGFA) on Dec. 28, 2000. Among other things, Lansing's arbitration complaint alleged that Waco defaulted on two corn and two milo purchase contracts written for delivery to Springdale, Ark. The submission included copies of the contracts between the parties and copies of correspondence with Waco.

Acting upon Lansing's complaint, the NGFA prepared a contract for arbitration and sent it to Lansing for execution. The NGFA's records also showed that defendant Waco was sent initial notice and a copy of Lansing's complaint on Jan. 4, 2001.

Lansing, as required by the NGFA Arbitration Rules, executed the contract for arbitration and returned the executed contract along with the arbitration service fee of \$500 to the NGFA. Both were received by the NGFA on Jan. 15, 2001.

The NGFA then sent a letter dated Jan. 17, 2001 via U.S. Postal Service certified mail to Waco, which requested execution of the contract for arbitration and payment of the arbitration service fee. The NGFA letter contained the following paragraph:

“FAILURE TO COMPLY WITH THE NGFA ARBITRATION RULES AND/OR FAILURE TO FILE ANY RESPONSIVE STATEMENT WITH THE NATIONAL SECRETARY MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU, WHICH THE PLAINTIFF MAY ENFORCE IN A COURT OF LAW. FAILURE TO RESPOND TO THIS NOTICE AND PLAINTIFF'S CLAIM MAY AFFECT YOUR LEGAL RIGHTS.” [Emphasis in original.]

The certified mail receipt returned to the NGFA confirmed that Waco received the Jan. 17 letter on Jan. 23, 2001.¹ Waco failed to return an executed copy of the contract for arbitration or the required arbitration service fee.

In a letter dated Feb. 27, 2001, Lansing requested that the NGFA file a default judgment against Waco in the amount of \$19,950. Lansing's letter cited Waco's failure to execute the contract for arbitration and pay the requisite \$500 fee.

After the deadline for Waco to execute the contract, the NGFA had been in communication with Keith Elliston, Waco's counsel. On Feb. 12, 2001, a copy of the Jan. 17 letter was sent to Mr. Elliston via facsimile and was confirmed as having been received. On April 9, the Jan. 17 letter was sent again by facsimile and confirmed as having been received. Finally, a letter was sent on April 24, 2001, via U.S. certified mail, informing Waco that it had 10 days to execute the contract and pay the required \$500 fee or else a default judgment would be issued in favor of Lansing. The letter was confirmed as having been received on April 30, 2001.²

¹ Article Number 7099 3400 0011 3924 4372; signed for by Milton Bell.

² Article Number 7099 3400 0011 8589 3289; signed for by Keith Elliston.

The Decision

Waco clearly received notice of the arbitration complaint filed against it. Further, Waco clearly received the subsequent correspondences sent, including the April 24 letter that provided Waco with a second opportunity to respond to the complaint. Thus, it was clear that Waco made a conscious decision not to proceed with NGFA arbitration.

Lansing was an active NGFA member in good standing at the time the contracts were executed. Waco was and is not a member. Section 3(a)(2) of the NGFA Arbitration Rules expressly provides, among other things, that:

“If the contract in dispute between a member and a nonmember provides for arbitration by the National Association or under its Arbitration Rules, the parties to the contract shall be deemed to have consented to arbitration under these Arbitration Rules.”

Section 3(c)(4) of the NGFA Arbitration Rules further provides that:

“A general reference to NGFA rules shall be deemed to incorporate all rules of this Association including the...Trade Rules and Arbitration Rules, and all definitions included in the Trade Rules shall apply under these Arbitration Rules, likewise.”

Therefore, the language in the contracts at issue bound both parties to arbitrate this matter under the NGFA Arbitration Rules even though Waco was not a member.

There was no indication that Waco intended to execute the contract for arbitration, pay the required arbitration service fee, or otherwise comply with the NGFA Arbitration Rules. Section 5 of the NGFA Arbitration Rules requires a party to “complete the contract for arbitration within fifteen (15) days from the date the party receives the contract from the National Secretary.” The defendant clearly violated the time limits in the rules.

Section 1 of the NGFA Arbitration Rules provides that the “National Secretary shall have the authority to make such decisions as are necessary to carry out these Rules.” Section 5(e) of the NGFA Arbitration Rules expressly authorizes the entry of default judgments where a party “fails to pay the arbitration service fee and/or fails to execute the contract for arbitration.”

In this case, Waco failed to comply with the NGFA Arbitration Rules as described previously. Thus, the National Secretary deemed it appropriate to execute Lansing’s request for a default judgment against Waco.

The Award

Therefore, it is ordered that Lansing Feed and Grain is awarded a judgment against Waco in the amount of \$19,950.

Dated: May 11, 2001.

National Grain and Feed Association

By: Matthew W. Lisle, National Secretary