



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

January 9, 2003

Arbitration Case Number 2028

Plaintiff: Mayco Export Inc., Minneapolis, Minn.

Defendant: Kaufman Ingredients Inc., Vernon Hills, Ill.

Factual and Procedural Background

Mayco Export Inc. (Mayco), the plaintiff, requested the entry of a default judgment in the amount of \$8,886.90, plus interest against Kaufman Ingredients Inc. (Kaufman Ingredients), the defendant. The judgment was granted for the reasons set forth below.

Mayco filed its arbitration complaint pursuant to a letter dated Sept. 19, 2002 and received by the National Grain and Feed Association (NGFA) on Sept. 20, 2002. Among other things, Mayco's arbitration complaint alleged that Kaufman Ingredients had failed to pay the remaining balance of \$8,886.90 for contracts SD 15945 and SD 15914 involving several truckloads of wheat delivered by Mayco to Kaufman Ingredients. Each contract provided under "Contract Terms and Conditions" that it was "[s]ubject to the Rules of the National Grain and Feed Association." Mayco was a NGFA Active member in good standing at the time each contract was made.

Acting upon Mayco's complaint, the NGFA prepared a contract for arbitration and sent it to Mayco for execution. The NGFA's records also show that defendant Kaufman Ingredients was sent initial notice, and a copy of Mayco's complaint on Sept. 23, 2002 via certified mail.

Mayco, as required by the NGFA Arbitration Rules, executed the contract for arbitration and returned to the NGFA the executed contract and the arbitration service fee of \$388.87, which were received by the NGFA on Sept. 30, 2002.

The NGFA sent to Kaufman Ingredients several letters requesting execution of the contract for arbitration and payment of the arbitration service fee. The first notice was sent via certified mail on Sept. 23, 2002. The second notice was sent via Federal Express on Oct. 4, 2002. The last notice was faxed and sent via first-class mail on Oct. 8, 2002. The second notice, a copy of which was included in the third mailing, 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 defendant refused to accept delivery of the first and second notices. The third notice, which was faxed, was received by the defendant on Oct. 8, 2002.

Mayco submitted copies of the contracts between the parties, along with copies of other records showing the disputed shipments to Kaufman Ingredients.

The Decision

The defendant clearly received notice of the arbitration complaint filed against it. Thus, it appears that the defendant made a conscious decision not to proceed with NGFA arbitration.

Mayco was an Active NGFA member in good standing at the time the contracts were executed. Section 3(a)(2) of the NGFA Arbitration Rules expressly provides, among other things, that: “[i]f 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.”

The language in the parties’ contracts, therefore, bound both parties to arbitrate this matter under the NGFA Arbitration Rules, even though the plaintiff was not a member.

There is no indication that the defendant intends 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. Moreover, the defendant clearly refused the NGFA’s notices.

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.” The defendant in this case failed to comply with the NGFA Arbitration Rules. Thus, it is appropriate to enter the requested award in favor of the plaintiff, Mayco Export Inc., and against the defendant, Kaufman Ingredients Inc.

The Award

Therefore, it is ordered that:

1. Mayco Export Inc. is awarded a judgment against Kaufman Ingredients Inc. in the amount of \$8,886.76.
2. Compound interest on the judgment shall accrue at the highest statutory rate on judgments applicable in Minnesota from Sept. 19, 2002 until paid in full.

Dated: Nov. 7, 2002

National Grain and Feed Association

By: Charles M. Delacruz
National Secretary