



National Grain and Feed Association

Arbitration Decision

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July 24, 2003

Arbitration Case Number 2040

Plaintiff: Cooperative Marketing Alliance, Memphis, Tenn.

Defendant: Mike Johnson, Lake Wilson, Minn.

Factual and Procedural Background

The plaintiff, Cooperative Marketing Alliance (CoMark), requested the entry of a default judgment in the amount of \$4,270.15 against the defendant, Mike Johnson (Johnson). The default judgment is granted for the reasons set forth below.

CoMark filed its arbitration complaint with the National Grain and Feed Association (NGFA) on Jan. 16, 2003. CoMark's complaint alleged, among other things, that Johnson breached a marketing agreement dated March 29, 2001 for the delivery of corn on or before July 31, 2002. CoMark alleged that it received notice of Johnson's intended breach on July 22, 2002, and that, as a result, Johnson consequently owed \$4,270.15 to CoMark. CoMark submitted copies of the contract between the parties.

CoMark is a NGFA active member in good standing and was so at the time the contract was executed. The contract expressly provided for settlement of any disputes through arbitration before the NGFA. Specifically, the terms of the contract stated as follows:

"10. Miscellaneous

"(m) Arbitration. The parties to this contract 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 National Grain and Feed Association (NGFA) pursuant to the NGFA Arbitration Rules. The decision and award determined through such arbitration award may be entered and enforced in any court having jurisdiction thereof."

Acting upon CoMark's complaint, the NGFA prepared a contract for arbitration and submitted it to CoMark for execution. By certified mail dated Jan. 23, 2003, the NGFA also sent Johnson a letter providing initial notice of these proceedings and copies of CoMark's complaint, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that Johnson received this mailing on Jan. 27, 2003. Upon receipt of the duly executed contract for arbitration from CoMark, the NGFA then sent it by certified mail to Johnson with a letter dated Feb. 3, 2003. The certified mail return receipt confirmed that Johnson personally signed for and received this mailing, which referenced the NGFA Arbitration Rules that provide that the parties execute and return arbitration contracts within 15 days.

On Feb. 28, 2003, the NGFA sent a notice by first-class mail to Johnson reminding him that a response was overdue and requesting that he contact the NGFA with any questions or comments. On March 18, 2003, the NGFA sent by certified mail yet another notice. This mailing included copies of the prior notices, the contract for arbitration and other documents. This notice again referenced the NGFA's Arbitration Rules, which provide for the entry of a default judgment upon failure to execute an arbitration contract within 15 days. The notice specifically stated that "[b]ased 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 return receipt confirmed that Johnson received this mailing on March 22, 2003.

The NGFA has yet to receive an executed arbitration contract from Johnson.

Default Judgment

The NGFA has jurisdiction over this matter pursuant to the express terms of the contract between the parties and the NGFA Arbitration Rules. Section 3(a)(2) of the NGFA's Arbitration Rules states as follows:

"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) further provides the following:

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

The contract between CoMark and Johnson specifically invoked NGFA arbitration in its terms and conditions. Because of CoMark's status as a NGFA active member and the language in the contract, the parties were bound to arbitrate this matter.

CoMark properly and in a timely manner filed its complaint in compliance with NGFA Arbitration Rule Section 5(a). Pursuant to Section 5(b), the NGFA then submitted a contract for arbitration to the parties. Section 5(d) states that, *"it shall be the duty of both parties to complete the contract for arbitration within fifteen (15) days from the date the party receives the contract from the National Secretary."* CoMark properly executed and returned the contract for arbitration. Johnson refused to comply with any arbitration-related mailings, including materials delivered by certified mail.

NGFA Arbitration Rule Section 5(e) provides the following:

"Where a party fails to pay the arbitration service fee and/or fails to execute the contract for arbitration, the National Secretary may without further submissions by the parties enter a default judgment or such other relief as the National Secretary deems appropriate."

Johnson received notice of the arbitration complaint filed against him and the contract for arbitration on several occasions. Thus, it appears Johnson made a conscious decision to disregard these arbitration proceedings. Therefore, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary finds that entry of default judgment against Johnson is proper and warranted.

Section 5(e) also sets forth the requirements and conditions under which, *"[a]ny party against whom a default judgment has been entered under this provision may apply for vacation of the default judgment within fifteen (15) days of entry of the default judgment."*

The Award

Therefore, it is ordered that:

Cooperative Marketing Alliance is awarded judgment against Mike Johnson for \$4,270.15.

Dated: June 3, 2003

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz, Esq., National Secretary