



National Grain and Feed Association

Arbitration Decision

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April 1, 2004

Arbitration Case Number 2061

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: William Bird, Jr., Halls, Tenn.

Factual and Procedural Background

The plaintiff, Cargill Inc. (Cargill), requested the entry of a default judgment in the amount of \$26,380, plus interest, against the defendant, William Bird Jr. (Bird). The default judgment is granted for the reasons set forth below.

Cargill filed its arbitration complaint with the National Grain and Feed Association (NGFA) on Aug. 15, 2003. Cargill's complaint alleged, among other things, that Bird breached Cargill contract numbers 31200 and 31466 involving corn and soybeans, respectively. Cargill also alleged that these contracts were cancelled pursuant to Bird's instructions, and that Bird failed to pay to Cargill the resulting equity of \$26,380 due under the contracts. Cargill submitted copies of the contracts between the parties with its complaint.

Cargill is a NGFA active member in good standing and was so at the time the contracts were executed. The contracts expressly provided for settlement of any disputes through arbitration before the NGFA. Specifically, the contracts indicated "**Rules to Govern: NGFA**" on the front page, and under "**PURCHASE TERMS**," the contracts stated as follows:

"1. The parties agree that the sole remedy for resolution of all disagreements or disputes between the parties arising under this Contract shall be arbitration proceedings under the trade association identified on the front side hereof. If no trade association is identified, then NGFA Arbitration Rules then in effect shall apply, and judgment upon the award may be entered in any court having jurisdiction thereof. The decision and award determined by such arbitration shall be final and binding upon both parties."

Acting upon Cargill's complaint, the NGFA prepared a contract for arbitration and submitted it to Cargill for

execution. By certified mail dated Aug. 26, 2003, the NGFA also sent Bird a letter providing initial notice of these proceedings and copies of Cargill's complaint, as well as the NGFA Trade Rules and Arbitration Rules. This mailing was returned to the NGFA as "unclaimed." Upon receipt of the duly executed contract for arbitration from Cargill, the NGFA then sent it by certified mail to Bird with a letter dated Sept. 9, 2003, which referenced the NGFA Arbitration Rules that provide that the parties execute and return arbitration contracts within 15 days. The certified mail return receipt confirmed delivery of this mailing to Bird on Sept. 29, 2003.

On Oct. 20, 2003, the NGFA sent a notice by first-class mail to Bird reminding him that a response was overdue and requesting that he contact the NGFA with any questions or comments. On Nov. 10, 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.] This mailing also was returned to the NGFA as "unclaimed." On Dec. 16, 2003, the NGFA sent this mailing again by first-class mail with the aforementioned notice and attachments.

The NGFA has yet to receive an executed arbitration contract or any other response from Bird, despite repeated attempts to contact Bird from September through the present date.

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©(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 Cargill and Bird specifically invoked NGFA arbitration in its terms and conditions. Because of Cargill's status as a NGFA active member and the language in the contract, the parties were bound to arbitrate this matter.

Cargill 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."* Cargill properly executed and returned the contract for arbitration. Bird 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."

Bird received notice of the arbitration complaint filed against him and the contract for arbitration on several occasions. Thus, it appears Bird 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 Bird is proper and warranted.

Section 5(e) of the NGFA Arbitration Rules 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:

1. Cargill Inc. is awarded judgment against William Bird, Jr. for \$26,380.
2. Compound interest on the judgment shall accrue at the statutory rate available for judgments in the applicable jurisdiction from this date until paid in full.

Dated: Feb. 25, 2004

National Grain and Feed Association

By: Charles M. Delacruz
National Secretary