



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

August 19, 2004

Arbitration Case Number 2085

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: John Roorda, Montezuma, Iowa

Factual and Procedural Background

The plaintiff, Cargill Inc. (Cargill), requested the entry of a default judgment in the amount of \$18,366.43, plus interest, against the defendant, John Roorda (Roorda). 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 Feb. 4, 2004. Cargill's complaint alleged that Roorda breached Cargill contract numbers 79836 and 79890 involving soybeans, resulting in total damages of \$18,366.43 due to Cargill. Cargill also sought payment of interest on the amount of damages. 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 "ADDITIONAL TERMS AND CONDITIONS" the contracts stated as follows:

"1. RULES: The Rules of the Association listed on the face of this Contract shall govern. All disputes arising out of this transaction shall be resolved by arbitration in accordance with the rules of such Association."

Acting upon Cargill's complaint, the NGFA prepared an arbitration services contract and submitted it to Cargill for execution. By certified mail dated Feb. 19, 2004, the NGFA also sent Roorda a letter providing initial notice of these proceedings and copies of Cargill's complaint, as well as copies of the NGFA Trade Rules and Arbitration Rules. This

mailing was returned to the NGFA as "unclaimed." Upon receipt of the duly executed arbitration services contract from Cargill, the NGFA then sent it by certified mail to Roorda with a letter dated March 23, 2004, which referenced the NGFA Arbitration Rules that provide that the parties execute and return arbitration service contracts within 15 days. This mailing was delivered on April 8, 2004. Following a request by Roorda, additional copies of the documents originally sent on Feb. 19 and March 23, 2004 were sent again to Roorda by first-class mail on April 9, 2004.

On May 12, 2004, the NGFA sent a notice by first-class mail to Roorda reminding him that a response was overdue and requesting that he contact the NGFA with any questions or comments. On May 28, 2004, the NGFA sent by Federal Express yet another notice. This mailing included copies of the previous 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, "[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 was delivered and signed for on June 2, 2004 by Roorda. The undersigned also subsequently attempted to contact Roorda by telephone, but was unsuccessful.

The NGFA has yet to receive an executed arbitration contract, despite repeated attempts to contact Roorda from February 2004 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. Specifically, 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."

The contract between Cargill and Roorda 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 filed its complaint in compliance with NGFA Arbitration Rules Section 5(a). Pursuant to Section 5(b), the NGFA then submitted an arbitration services contract 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. Roorda

refused to comply with any arbitration-related mailings, including materials delivered by certified and expedited 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."

Notice to Roorda of the arbitration complaint filed against him and the arbitration services contract were tendered on several occasions. Thus, it appeared Roorda 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 Roorda 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:

1. Cargill Inc. is awarded judgment against John Roorda in the amount of \$18,366.43.
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: July 12, 2004

National Grain and Feed Association

By: Charles M. Delacruz

National Secretary