



National Grain and Feed Association

Arbitration Decision

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August 19, 2004

Arbitration Case Number 2086

Plaintiff: Cooperative Marketing Alliance d/b/a CoMark, Memphis, Tenn.

Defendant: J. Tom Donnell, Humboldt, Ill.

Factual and Procedural Background

The plaintiff, Cooperative Marketing Alliance d/b/a CoMark (CoMark), requested the entry of a default judgment in the amount of \$2,457.83 against the defendant, J. Tom Donnell (Donnell). 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 Feb. 11, 2004. CoMark's complaint alleged that Donnell failed to deliver grain under an executed marketing agreement, resulting in total damages of \$2,457.83 due to CoMark. CoMark submitted a copy of the marketing agreement between the parties with its complaint.

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, under paragraph (m) "Arbitration," the contract stated as follows:

"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 an arbitration services contract and submitted it to CoMark for execution. By certified mail dated Feb. 19, 2004, the NGFA

also sent Donnell a letter providing initial notice of these proceedings and copies of CoMark's complaint, as well as a copy 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 CoMark, the NGFA then sent it by certified mail to Donnell with a letter dated March 3, 2004, which referenced the NGFA Arbitration Rules that provide that the parties execute and return arbitration service contracts within 15 days. This mailing also was returned the NGFA as "unclaimed."

On March 29, 2004, the NGFA sent a notice by first-class mail to Donnell reminding him that a response was overdue and requesting that he contact the NGFA with any questions or comments. On May 12, 2004, the NGFA sent by certified and first-class mail 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.] The mailing sent by certified mail was returned to the NGFA as "unclaimed."

The NGFA has yet to receive an executed arbitration contract or any other response from Donnell, despite repeated attempts to contact Donnell from February 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 CoMark and Donnell 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 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."* CoMark properly executed and returned the contract for arbitration. Donnell 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."

Notice to Donnell of the arbitration complaint filed against him and the arbitration services contract were tendered on several occasions. Thus, it appeared Donnell 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 Donnell 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. CoMark Inc. is awarded judgment against J. Tom Donnell in the amount of \$2,457.83.

Dated: July 12, 2004

National Grain and Feed Association

By: Charles M. Delacruz
National Secretary