



National Grain and Feed Association

Arbitration Decision

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July 17, 2008

Arbitration Case Number 2192

Plaintiff: DeBruce Grain, Inc., Kansas City, Mo.

Defendant: Heartland Commodities LLC, Joplin, Mo.

Factual and Procedural Background

The plaintiff, DeBruce Grain, Inc. (DeBruce), requested the entry of a default judgment in the amount of \$577,250.00 against the defendant, Heartland Commodities LLC (Heartland). The default judgment was granted for the reasons set forth below.

DeBruce submitted an arbitration complaint dated November 19, 2007 to the National Grain and Feed Association (NGFA). The complaint alleged that Heartland failed to perform on DeBruce contracts nos. 6015428, 6015429, 6015430, 6015431, 6015432, and 6015433. Each of these contracts contained provisions specifically providing for the resolution of any disputes that arise under these agreements by the NGFA.

Acting upon DeBruce's complaint, the NGFA prepared an arbitration services contract and submitted it to DeBruce for execution. By certified mail dated November 29, 2007, the NGFA also sent to Heartland's registered agent a letter providing notice of these proceedings with copies of DeBruce's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The NGFA received a letter, dated December 5, 2007, from attorney Michael Bigheart stating that he had forwarded this correspondence to Heartland's registered agent along to attorney Mitchell Cross, who would be representing Heartland in this matter. Both Mr. Cross and Heartland's principal, Butch Gifford, were also copied on Mr. Bigheart's correspondence to NGFA.

Upon receipt of the duly executed arbitration services contract from DeBruce, the NGFA submitted it to Heartland by certified mail on December 13, 2007. This letter specifically provided notice that Sections 5(c) and (d) of the NGFA Arbitration Rules required that the signed contract be returned within fifteen (15) days.

After not receiving any response from Heartland, or any indication that a response was forthcoming, on February 15, 2008, the NGFA sent a letter by Federal Express delivery. This notice further specifically stated as follows:

*"NGFA Arbitration Rules 5(d) and (e) provide for the entry of a default judgment when a party fails to execute the arbitration contract and pay the service fee within fifteen (15) days. Based 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].*

Federal Express confirmed that this mailing was delivered to Heartland on February 19, 2008.

The NGFA has yet to receive an executed arbitration services contract from Heartland, despite the repeated attempts by NGFA to contact Heartland.

Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of the contracts and by way of DeBruce's status as a NGFA active member.

DeBruce properly and in a timely manner filed its complaint under NGFA Arbitration Rules Section 5(a). Pursuant to Sec-

tion 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." DeBruce properly executed and returned the arbitration services contract. Heart-

land refused to comply with the NGFA Arbitration Rules, and refused to respond to any arbitration-related mailings.

NGFA Arbitration Rule Section 5(e) provides for 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.”

As it appears that Heartland made a conscious decision to disregard these arbitration proceedings, pursuant to Section

5(e) of the NGFA Arbitration Rules, the National Secretary found that entry of default judgment against Heartland was proper and warranted.

Therefore, on June 13, 2008, the NGFA entered a default judgement against the defendant. The defendant was also advised that NGFA Arbitration Rule Section 5(e) 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.” In this case, the defendant did not apply to vacate the default judgement pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. DeBruce Grain, Inc. is awarded judgment against Heartland Commodities, LCC for \$577,250.00.
2. 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: June 13, 2008

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary