



National Grain and Feed Association

Arbitration Decision

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September 15, 2008

Arbitration Case Number 2199

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: Les Bruntz, Oxford, Neb.

Factual and Procedural Background

The plaintiff, Cargill Inc. (Cargill), requested the entry of a default judgment in the amount of \$46,476.73 against the defendant, Les Bruntz (Mr. Bruntz). The default judgment was granted for the reasons set forth below.

Cargill submitted an arbitration complaint dated Jan. 8, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Mr. Bruntz failed to perform on five duly signed contracts for delivery of corn (designated as Cargill contracts SHEL-AH-66131, SHEL-AH-59270, SHEL-AH-70448, SHEL-AH-71966, and SHEL-AH-64600). Each of the contracts provided under "PURCHASE TERMS" as follows:

"NGFA Trade and Arbitration Rules. Unless otherwise provided herein, this Contract shall be subject to the Trade Rules of the National Grain and Feed Association (NGFA), which Trade Rules are incorporated herein by reference. **The parties agree that the sole forum for resolution of all disagreements or disputes between the parties arising under this Contract or relating to the formation of this Contract shall be arbitration proceedings before NGFA pursuant to NGFA Arbitration Rules.** The decision and award determined by such arbitration shall be final and binding upon both parties and judgement upon the award may be entered in any court having jurisdiction thereof. Copies of the NGFA Trade and Arbitration Rules are available from Buyer upon request and are available at www.ngfa.org." [Emphasis added]

Acting upon Cargill's complaint, the NGFA prepared an arbitration services contract and submitted it to Cargill for execution. By certified mail dated Jan. 11, 2008, the NGFA also sent to Mr. Bruntz a letter providing notice of these proceedings with copies of Cargill's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Mr. Bruntz was signed for and received on Jan. 14, 2008.

Upon receipt of the duly executed arbitration services contract from Cargill, the NGFA submitted it to Mr. Bruntz by certified mail on Jan. 23, 2008. The certified mail return receipt confirmed that this mailing to Mr. Bruntz was signed for and received on Feb. 7, 2008.

After not receiving an appropriate response from Mr. Bruntz, the NGFA on March 12, 2008 sent another letter by certified mail delivery. The certified mail return receipt confirmed that this mailing to Mr. Bruntz was signed for and received on March 21, 2008. The NGFA's letters of Feb. 7, 2008 and March 12, 2008 to Mr. Bruntz specifically provided notice that Sections 5(c) and (d) of the NGFA Arbitration Rules required that the signed contract be returned within 15 days.

After still not receiving an appropriate response from Mr. Bruntz, the NGFA on May 16, 2008 sent another letter by certified mail 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. We must anticipate that you do not intend to comply, and this will be our last attempt to communicate in this regard. 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 this mailing to Mr. Bruntz was signed for and received on May 20, 2008.

The NGFA has yet to receive an executed arbitration services contract from Mr. Bruntz, despite the repeated attempts by the NGFA to communicate with Mr. Bruntz.

Default Judgment

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

Cargill properly and in a timely manner filed its complaint under 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 arbitration services contract. Mr. Bruntz refused to comply with the NGFA Arbitration Rules, and refused to respond to any arbitration-related mailings.

NGFA Arbitration Rules 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 Mr. Bruntz made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary finds that entry of default judgment against Mr. Bruntz is proper and warranted.

Therefore, on August 6, 2008, the NGFA entered a default judgement against the defendant. The defendant also was advised that NGFA Arbitration Rules 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. Cargill Inc. is awarded judgment against Les Bruntz for \$46,476.73.
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: Aug. 6, 2008

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary