



National Grain and Feed Association

Arbitration Decision

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October 23, 2008

Arbitration Case Number 2233

Plaintiff: The Scoular Company, Minneapolis, Minn.

Defendant: Don Applegate, Wellington, Kan.

Factual and Procedural Background

The plaintiff, The Scoular Company (Scoular), requested the entry of a default judgment in the amount of \$73,475.00 against the defendant, Don Applegate (Mr. Applegate). The default judgment was granted for the reasons set forth below.

Scoular submitted an arbitration complaint dated March 28, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Mr. Applegate failed to perform on Scoular contracts nos. PW1404153, PW1404156, and PW1404169 for hard red winter wheat. Each of these contracts contained provisions specifically providing for the resolution of any disputes that arise under these agreements by the NGFA.

Acting upon Scoular's complaint, the NGFA prepared an arbitration services contract and submitted it to Scoular for execution. By certified mail dated April 3, 2008, the NGFA also sent to Mr. Applegate a letter providing notice of these proceedings with copies of Scoular's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. This mailing was returned unclaimed.

Upon receipt of the duly executed arbitration services contract from Scoular, the NGFA submitted it to Mr. Applegate along with a copy of the April 3, 2008 mailing by Federal Express delivery on May 8, 2008. Federal Express confirmed that this mailing was delivered on May 12, 2008.

On June 17, 2008, the NGFA sent another letter by Federal

Express delivery. Federal Express confirmed that this mailing was delivered on June 19, 2008. The NGFA's letters of May 8, 2008 and June 17, 2008 to Mr. Applegate 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 still not receiving any response from Mr. Applegate, or any indication that a response was forthcoming, on July 10, 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 Mr. Applegate on July 15, 2008.

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

Default Judgment

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

Scoular 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." Scoular properly executed and returned the arbitration services contract. Mr. Applegate 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 Mr. Applegate 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. Applegate is proper and warranted.

Therefore, on September 8, 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. The Scoular Company is awarded judgment against Don Applegate for \$73,475.00.
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: September 8, 2008

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary