



National Grain and Feed Association

Arbitration Decision

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December 17, 2008

Arbitration Case Number 2254

Plaintiff: West Plains Co., Kansas City, Mo.

Defendant: M&M Organic Marketing, St. Claude, Manitoba, Canada

Factual and Procedural Background

The plaintiff, West Plains Co. (West Plains), requested the entry of a default judgment in the amount of \$21,166.92 against the defendant, M&M Organic Marketing (M&M). The default judgment was granted for the reasons set forth below.

West Plains submitted an arbitration complaint dated May 12, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that M&M failed to perform on West Plains contract No. 200680 for 3,333 bushels of organic hard red spring wheat. The contract contained the following provision: “**Trade Rules to Govern:** National Grain & Feed Association Rules & Arbitration to Apply.” [*Emphasis in original.*] Also, immediately above the lines for signature by the buyer and seller, the contract stated: “THIS CONTRACT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.” [*Emphasis in original.*]

Acting upon West Plains’ complaint, the NGFA prepared an arbitration services contract and submitted it to West Plains for execution. By FedEx mail dated May 16, 2008, the NGFA also sent to M&M a letter providing notice of these proceedings with copies of West Plains’ complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. Federal Express confirmed that this mailing to M&M was signed for and received on May 21, 2008.

Upon receipt of the duly executed arbitration services contract from West Plains, the NGFA submitted it to M&M by Federal Express mail on May 28, 2008. This letter specifically provided notice that Sections 5(c) and (d) of the NGFA Arbitration Rules required that the signed contract be returned within 15 days. Federal Express confirmed that this mailing was signed for and received on May 30, 2008.

On July 18, 2008, the NGFA sent another letter to M&M by Federal Express delivery. Federal Express confirmed that this mailing was delivered on July 22, 2008. This letter again provided notice that “NGFA Arbitration Rules 5(d) and (e) provide for the entry of a default judgement when a party fails to execute the arbitration contract and pay the service fee within fifteen (15) days.”

After still not receiving any response from M&M, or any indication that a response was forthcoming, on Sept. 8, 2008, the NGFA sent yet another notice to M&M by Federal Express delivery, which Federal Express was unable to deliver because the recipient was this time “not available.”

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

Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of the contracts and by way of West Plains’ status as a NGFA active member.

West Plains 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.” West Plains properly executed and returned the arbitration services contract. M&M

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 M&M 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 M&M is proper and warranted.

Therefore, on Nov. 7, 2008, the NGFA entered a default judgment against the defendant. The defendant also was 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 judgment pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. West Plains Co. is awarded judgment against M&M Organic Marketing for \$21,166.92.
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: Nov. 7, 2008

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary