



April 23, 2009

CASE NUMBER 2260

Plaintiff: Cargill, Incorporated, Minneapolis, Minn.

Defendant: B & B Farms, Bloomfield, Mo.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Cargill, Incorporated (Cargill), requested the entry of a default judgment in the amount of \$38,662.50 against the defendant, B & B Farms (B & B Farms). The default judgment was granted for the reasons set forth below.

Cargill submitted an arbitration complaint dated October 16, 2007 to the National Grain and Feed Association (NGFA). The complaint alleged that B & B Farms failed to perform on duly signed Cargill contract no. 21870 for delivery of 5,000 bushels of #2 soft red winter wheat.

The contract indicated, “**Rules to Govern:** NGFA,” and under “PURCHASE TERMS,” stated as follows:

1. **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 judgment 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 in original].

Acting upon Cargill’s complaint, the NGFA prepared an arbitration services contract and submitted it to Cargill for execution. By certified mail dated May 30, 2008, the NGFA also sent to B & B Farms 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. This mailing was returned unclaimed.

Upon receipt of the duly executed arbitration services contract from Cargill, the NGFA then sent it with accompanying correspondence and a copy of the May 30, 2008 mailing to B & B Farms by Federal Express delivery on June 19, 2008. Federal Express confirmed that this mailing was delivered on June 23, 2008.

On August 4, 2008, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on August 6, 2008. The NGFA’s letters of June 19 and August 4, 2008 to B & B Farms 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 B & B Farms, or any indication that a response was forthcoming, the NGFA sent yet another notice to B & B Farms on September 11, 2008 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 B & B Farms on September 15, 2008.

On September 24, 2008, B & B Farms claimed by telephone that it was in bankruptcy. B & B Farms was assured that NGFA would stay the arbitration proceedings upon verification of the bankruptcy status. On September 29, 2008, NGFA received a letter from B & B Farms stating, "As per our phone conversation on September 22, 2008 I regret to inform you that I am in the middle of a Chapter 12 reorganization. I will keep you informed as to the status of my case."

NGFA inquired into the status of a bankruptcy proceeding involving B & B Farms but was unable to find any information indicating the existence of any such proceeding. On December 4, 2008, NGFA sent another letter to B & B Farms by Federal Express delivery, in which NGFA again requested that B & B Farms provide confirmation of the bankruptcy proceeding. Federal Express confirmed that this mailing was delivered on December 8, 2008.

After not receiving a response to this request, NGFA sent yet another letter to B & B Farms by Federal Express delivery on January 9, 2009, reminding it again of the following:

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 on January 13, 2009.

The NGFA has yet to receive an executed arbitration services contract from B & B Farms or any information indicating a pending bankruptcy proceeding.

DEFAULT JUDGMENT

The NGFA established jurisdiction over this matter pursuant to the express terms of the contract 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. B & B Farms refused to comply with the NGFA Arbitration Rules, and refused to properly 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 B & B Farms 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 B & B Farms is proper and warranted.

Therefore, on March 25, 2009, the NGFA entered a default judgment 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 judgment pursuant to Section 5(e).

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. Cargill, Incorporated is awarded judgment against B & B Farms for \$38,662.50.
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. This award is not intended to preclude the plaintiff from pursuing an additional award for interest, legal fees or costs in a court of law.

Dated: March 25, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary