



National Grain and Feed Association

Arbitration Decision

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March 26, 2009

Arbitration Case Number 2261

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

**Defendant: Northwest Organic Community Mills Co-Operative LTD.
Maymont, Saskatchewan, Canada**

Factual and Procedural Background

The plaintiff, West Plains Co. (West Plains), requested the entry of a default judgment in the amount of \$814,150.00 against the defendant, Northwest Organic Community Mills Co-Operative LTD. (Northwest Organic). The default judgment was granted for the reasons set forth below.

West Plains submitted an arbitration complaint dated May 16, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Northwest Organic failed to perform on West Plains contract number 200496 for 85,700 bushels of organic rye. 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 certified mail dated May 30, 2008, the NGFA also sent to Northwest Organic 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. The certified mail return receipt confirmed that this mailing to Northwest Organic was signed for and received on June 13, 2008.

Upon receipt of the duly executed arbitration services contract from West Plains, the NGFA submitted it to Northwest Organic by Federal Express mail on June 19, 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 fifteen (15) days. Federal Express confirmed that this mailing was signed for and received on June 23, 2008.

On July 18, 2008, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on July 22, 2008. The NGFA’s letters of May 30, 2008 and June 19, 2008 to Northwest Organic 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 Northwest Organic, or any indication that a response was forthcoming, on Sept. 8, 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 Northwest Organic on Sept. 10, 2008.

On Oct. 23, 2008, the NGFA issued a default judgment for \$831,250, which was based upon the amount of damages claimed in West Plains’ complaint. Federal Express confirmed that this was delivered to Northwest Organic on Oct. 27. The NGFA subsequently was advised by West Plains that it had recalculated its damages in the case to the lesser amount of \$814,150. Accordingly, on Dec. 3, 2008, the NGFA advised Northwest Organic by letter of the recalculation of damages and that “based upon the lack of response from you to the extensive prior communications, [NGFA] shall anticipate issuing an amended default judgment unless we hear back from you within the next 10 days.” Northwest Organic refused to accept the

Dec. 3 mailing. The NGFA then resent these communications by first-class mail on Jan. 6, 2009.

The NGFA has yet to receive any response from Northwest Organic, despite the repeated attempts to contact Northwest Organic.

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 an 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. Northwest Organic 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 Northwest Organic 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 a default judgment against Northwest Organic is proper and warranted.

Therefore, on Feb. 25, 2009, 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 Northwest Organic Community Mills Co-Operative LTD. for \$814,150.
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: February 25, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary