



National Grain and Feed Association

Arbitration Decision

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February 26, 2009

Arbitration Case Number 2285

Plaintiff: Simmons Feed & Supply Co., dba Simmons Grain Co., Salem, Ohio

Defendant: Della Natura Commodities Inc., Bayside, N.Y.

Factual and Procedural Background

The plaintiff, Simmons Feed & Supply Co., dba Simmons Grain Co. (Simmons), requested the entry of a default judgment in the amount of \$489,804.00 against the defendant, Della Natura Commodities Inc. (Della Natura). The default judgment was granted for the reasons set forth below.

Simmons submitted an arbitration complaint dated June 2, 2008 to the National Grain and Feed Association (NGFA). The complaint was submitted pursuant to a May 5, 2008 order issued by the Hon. C. Ashley Pike of the Court of Common Pleas for Columbiana County, Ohio, which compelled the parties to arbitrate their dispute through the NGFA Arbitration system. In the complaint, Simmons alleged that Della Natura failed to perform on contract number S7630 for delivery of 36,760 bushels of organic soybeans.

Acting upon Simmons' complaint and the May 5, 2008 court order, the NGFA prepared an arbitration services contract and submitted it to Simmons for execution. By certified mail dated June 23, 2008, the NGFA also sent to Della Natura a letter providing notice of these proceedings with copies of Simmons' complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules.

Upon receipt of the duly executed arbitration services contract from Simmons, the NGFA then sent it with accompanying correspondence to Della Natura by certified mail on July 11, 2008. This certified mailing was returned unclaimed. Therefore, on Aug. 5, 2008, the NGFA sent another letter by Federal Express delivery, which included copies of the July 11, 2008 letter and the arbitration services contract. Federal Express confirmed that this mailing was delivered on Aug. 7, 2008.

On Aug. 11, 2008, NGFA received the executed arbitration services contract from Della Natura. The arbitration services

contract provides that the parties agree to submit the controversy to arbitration by NGFA, including that the parties specifically "agree to comply with all NGFA Arbitration Rules." The arbitration services contract also specifically states: "The parties agree that noncompliance with any NGFA Arbitration Rules may result in a default judgment." [Emphasis added.]

Pursuant to the NGFA Arbitration Rules, on Aug. 14, 2008, NGFA sent a request to Simmons for its First Argument (with a courtesy copy to Della Natura). This notice reminded the parties about the procedures contained in the Arbitration Rules for preparing their arguments, including that Simmons then had 20 days from receipt of the notice to file its First Argument. On Sept. 2, NGFA received from Simmons a timely request for an extension for filing its First Argument, which NGFA granted.

On Oct. 7, NGFA forwarded a copy of Simmons' first argument to Della Natura along with a request for Della Natura's Answer. This letter reminded Della Natura as follows:

"In accordance with Section 7(d) of the NGFA Arbitration Rules, the defendant shall have twenty (20) days from the date of receipt of the plaintiff's first argument in which to file an answer."

The certified mail return receipt confirmed that this mailing was signed for and received by Della Natura on Oct. 9. Della Natura did not submit an answer within the 20-day time frame provided, nor did it request an extension for filing its argument. NGFA Arbitration Rule 7(i) states as follows:

"The National Secretary may for good cause shown extend the time limits specified herein for a period no longer than twenty (20) days from the end of the

specified time period. Requests for extension of time must be made prior to expiration of the specified time period. Any extension so granted must be in writing, and a copy thereof sent to both parties.” [Emphasis added.]

On Nov. 12, NGFA contacted Della Natura to inquire about the status of the missing filing. NGFA received confirmation from Della Natura that in fact it had not filed an argument. NGFA also reminded Della Natura that under the NGFA Arbitration Rules, NGFA has limited discretion to provide an extension for good cause if requested “*prior to expiration of the specified time*

period,” and that given these circumstances, NGFA has no authority to provide an extension retroactively. Della Natura was advised, however, that NGFA may consider a request with the mutual consent of all the parties to permit a late filing. Della Natura indicated that it would follow up with NGFA after deciding whether to seek consent from Simmons to file an untimely argument.

On Dec. 29, Simmons sent to NGFA a request for the entry of a default judgement. NGFA has yet to hear further from Della Natura.

Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of the arbitration services contract and by way of the May 5, 2008 court order.

Both Simmons and Della Natura properly executed and returned the arbitration services contract, thus agreeing to comply with all NGFA arbitration procedures. Simmons properly and in a timely manner filed its First Argument under NGFA Arbitration Rules Section 7(b).

NGFA Arbitration Rule Section 7(i) provides for the following:

“In addition to default judgments issued pursuant to Section 5(d), where a party has failed to file arbitration papers in accordance with the time limits specified in this Section or by the National Secretary, the delinquent party shall be deemed to be in default,

except there is no obligation to file a rebuttal or surrebuttal.”

As it appears that Della Natura Commodities Inc. made a conscious decision to disregard these arbitration proceedings, pursuant to Section 7(d) of the NGFA Arbitration Rules, the National Secretary finds that entry of default judgment against Della Natura Commodities Inc. is proper and warranted.

Therefore, on Jan. 29, 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. Simmons Feed & Supply Co., dba Simmons Grain Co., is awarded judgment against Della Natura Commodities Inc. for \$489,804.
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: January 29, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: **Charles M. Delacruz**
National Secretary