



National Grain and Feed Association

Arbitration Decision

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December 17, 2008

Arbitration Case Number 2307

Plaintiff: Fisher Farmers Grain & Coal Co., Dewey, Ill.

Defendant: Dale A. Miller, Gifford, Ill.

Factual and Procedural Background

The plaintiff, Fisher Farmers Grain & Coal Co. (Fisher), requested the entry of a default judgment in the amount of \$3,467.60 against the defendant, Dale A. Miller. The default judgment was granted for the reasons set forth below.

Fisher submitted an arbitration complaint dated June 24, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Miller failed to perform on duly signed Fisher contract no. 600353 for delivery of 1,000 bushels of U.S. #2 hard red winter wheat. The contract contained the following provisions:

“NGFA TRADE RULES TO APPLY: Except as otherwise expressly provided herein, this contract shall be subject to the National Grain and Feed Association’s Trade Rules applicable on the date this purchase contract is signed. (NGFA Trade Rules and Arbitration Rules are available upon request.)

“ARBITRATION: The parties to this contract agree that the sole remedy for resolution of any and all disagreements or disputes arising under this Contract shall be through arbitration proceedings before the National Grain and Feed Association (NGFA) under NGFA Arbitration Rules. The decision and award determined through such arbitration shall be final and binding upon the Buyer and Seller. Judgement upon the arbitration award may be entered and enforced in any Court having jurisdiction thereof.”

Acting upon Fisher’s complaint, the NGFA prepared an arbitration services contract and submitted it to Fisher for execution. By certified mail dated July 15, 2008, the NGFA also sent Miller a letter providing notice of these proceedings with copies of Fisher’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Miller was signed for and received on July 18, 2008.

Upon receipt of the duly executed arbitration services contract from Fisher, the NGFA then sent it with accompanying correspondence to Miller by certified mail on Aug. 1, 2008. The certified mail return receipt confirmed that this mailing to Miller was signed for and received on Aug. 5, 2008.

On Sept. 9, 2008, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Sept. 10, 2008. The NGFA’s letters of Aug. 1, 2008 and Sept. 9, 2008 to Miller specifically provided notice that Sections 5(c) and (d) of the NGFA Arbitration Rules required that the signed contract be returned within 15 days.

After still not receiving any response from Miller, or any indication that a response was forthcoming, the NGFA sent yet another notice to Miller on Oct. 1, 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 Miller on Oct. 3, 2008.

The NGFA has yet to receive an executed arbitration services contract from Miller, despite repeated attempts by NGFA to contact him.

Default Judgment

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

Fisher 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." Fisher properly executed and returned the arbitration services contract. Miller 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 Dale A. Miller 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 Dale A. Miller 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 judgement pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. Fisher Farmers Grain & Coal Co. is awarded judgment against Dale A. Miller for \$3,467.60.
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