



National Grain and Feed Association

Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

January 15, 2009

Arbitration Case Number 2320

Plaintiff: McAlister Grain Co., Friars Point, Miss.

Defendant: Doyle Funderburk, Individually and d/b/a Funderburk Farms, Clarksdale, Miss.

Factual and Procedural Background

The plaintiff, McAlister Grain Co. (McAlister), requested the entry of a default judgment in the amount of \$40,200.00 against the defendants, Doyle Funderburk, individually and d/b/a Funderburk Farms (Funderburk). The default judgment was granted for the reasons set forth below.

McAlister submitted an arbitration complaint dated July 10, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Funderburk failed to perform on duly signed McAlister contract no. 0018537 for delivery of #1 yellow soybeans.

The contract contained the following provision:

“16. NGFA Arbitration of Disputes: 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) pursuant to 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. (Copies of the NGFA Arbitration Rules are available upon request; or by contacting the National Grain and Feed Association, 1201 New York Ave., NW, Suite 830, Washington, DC 20005.)”

Acting upon McAlister’s complaint, the NGFA prepared an arbitration services contract and submitted it to McAlister for execution. By certified mail dated July 31, 2008, the NGFA also sent to Funderburk a letter providing notice of these proceedings with copies of McAlister’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Funderburk was signed for and received on Aug. 5, 2008.

Upon receipt of the duly executed arbitration services contract from McAlister, the NGFA then sent it with accompanying correspondence to Funderburk by certified mail on Aug. 14, 2008. The certified mail return receipt confirmed that this mailing to Funderburk was signed for and received on Aug. 19, 2008.

On Oct. 1, 2008, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Oct. 3, 2008. The NGFA’s letters of Aug. 14, 2008 and Oct. 1, 2008 to Funderburk 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 Funderburk, or any indication that a response was forthcoming, the NGFA sent yet another notice to Funderburk on Nov. 14, 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 Funderburk on Nov. 18, 2008.

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

Default Judgment

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

McAlister 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." McAlister properly executed and returned the arbitration services contract. Funderburk 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 Funderburk 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 Doyle Funderburk, individually and d/b/a Funderburk Farms is proper and warranted.

Therefore, on Dec. 17, 2008, 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 judgement pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. McAlister Grain Co. is awarded judgment against Doyle Funderburk, individually and d/b/a Funderburk Farms for \$40,200.00.
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: December 17, 2008

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary