



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

March 26, 2009

Arbitration Case Number 2331

Plaintiff: Peavey Co., Omaha, Neb.

Defendant: L&L Farms, Bovina Texas

Factual and Procedural Background

The plaintiff, Peavey Co. (Peavey), requested the entry of a default judgment in the amount of \$239,500 against the defendant, L&L Farms (L&L Farms). The default judgment was granted for the reasons set forth below.

Peavey submitted an arbitration complaint dated Aug. 20, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that L&L Farms failed to perform on duly signed Peavey contract number B003477 for delivery of winter wheat.

The contract contained the following provision under “TERMS AND CONDITIONS”:

“CONTROVERSIES: Controversies and/or other disagreements between Buyer and Seller arising under this Contract shall be settled by arbitration which shall be a condition precedent to any right of legal action that either Buyer or Seller may have against the other party. Any arbitration shall be in accordance with the rules of the National Grain and Feed Association [NGFA]. At the time notice of arbitration is served by either Buyer or Seller upon the other, (i) if either is a member of NGFA, the NGFA Arbitration Committee shall serve as the arbitrator...”

Acting upon Peavey’s complaint, the NGFA prepared an arbitration services contract and submitted it to Peavey for execution. By certified mail dated Sept. 16, 2008, the NGFA also sent to L&L Farms a letter providing notice of these proceedings with copies of Peavey’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to L&L Farms was signed for and received on Sept. 19, 2008.

Upon receipt of the duly executed arbitration services contract from Peavey, the NGFA then sent it with accompanying correspondence to L&L Farms by certified mail on Oct. 3, 2008. The certified mail return receipt confirmed that this mailing to L&L Farms was signed for and received on Oct. 6, 2008.

On Dec. 2, 2008, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Dec. 5, 2008. The NGFA’s letters of Oct. 3 and Dec. 2, 2008 to L&L 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 L&L Farms, or any indication that a response was forthcoming, the NGFA sent yet another notice to L&L Farms on Jan. 9, 2009 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 L&L Farms on Jan. 13, 2009.

The NGFA has yet to receive any response from L&L Farms, despite the repeated attempts to contact him.

Default Judgment

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

Peavey 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." Peavey properly executed and returned the arbitration services contract. L&L Farms 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 L&L 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 L&L Farms 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. Peavey Co. is awarded judgment against L&L Farms for \$239,500.
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