



National Grain and Feed Association Arbitration Decision

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APRIL 23, 2009

CASE NUMBER 2349

Plaintiff: McAlister Grain Company, Friars Point, Miss.

Defendant: Linell Lewis, Helena, Ark.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, McAlister Grain Company (McAlister), requested the entry of a default judgment in the amount of \$6,875.00 against the defendant, Linell Lewis (Lewis). The default judgment was granted for the reasons set forth below.

McAlister submitted an arbitration complaint dated October 2, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Lewis failed to perform on duly signed McAlister contract no. 0020481 for delivery of 2,500 bushels of #1 soft red wheat.

The contract contained the following provision:

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. Judgment upon the arbitration award may be entered and enforced in any Court having jurisdiction thereof.

Acting upon McAlister's complaint, the NGFA prepared an arbitration services contract and submitted it to McAlister for execution. By certified mail dated October 20, 2008, the NGFA also sent to Lewis 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. This certified mailing was returned unclaimed.

Upon receipt of the duly executed arbitration services contract from McAlister, the NGFA then sent it with accompanying correspondence to Lewis by certified mail on October 30, 2008. This certified mailing was also returned unclaimed.

On November 25, 2008, the NGFA sent copies of the October 20 and October 30, 2008 mailings to Lewis by Federal Express delivery. Federal Express confirmed that this mailing was delivered on November 28, 2008.

On January 9, 2009, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on January 12, 2009. The NGFA's letters of October 30, 2008 and January 9, 2009 to Lewis 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 Lewis, or any indication that a response was forthcoming, the NGFA sent yet another notice to Lewis on February 13, 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 Lewis on February 17, 2009.

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

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. Lewis 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 Lewis 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 Linell Lewis is proper and warranted.

Therefore, on March 24, 2009, 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 judgment pursuant to Section 5(e).

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. McAlister Grain Company is awarded judgment against Linell Lewis for \$6,875.00.
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. This award is not intended to preclude the plaintiff from pursuing an additional award for interest, legal fees or costs in a court of law.

Dated: March 24, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary