



National Grain and Feed Association

Arbitration Decision

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ARBITRATION CASE NUMBER 2353

Plaintiff: Archer-Daniels-Midland Company d/b/a ADM/Ceres Solutions, St. Louis, Mo.

Defendant: Risk Farms Inc., Paragould, Ark.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Archer-Daniels-Midland Company d/b/a ADM/Ceres Solutions (ADM), requested the entry of a default judgment in the amount of \$97,800.00 against the defendant, Risk Farms Inc. (Risk Farms). The default judgment was granted for the reasons set forth below.

ADM submitted an arbitration complaint dated October 15, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Risk Farms failed to perform on duly signed ADM contract no. 27967 for delivery of 15,000 bushels of #1 yellow soybeans.

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

This Contract is subject to the rules of the market to which the grain is shipped and the Grain Trade Rules of the National Grain and Feed Association (“NGFA”) (the “Trade Rules”) except to the extent the same are in conflict with the terms expressed herein. Performance of this Contract is subject to orders, rule, and regulations of all government agencies, and to all causes, except as limited herein, which are beyond the reasonable control of the parties hereto. To the extent that the rules of the market, the Trade Rules or the terms expressed herein conflict, the following priority shall be observed to determine the prevailing rule: (i) contract terms (ii) market rules and (iii) the NGFA Trade Rules. The parties agree that any controversies that may arise between them under this Contract shall be resolved by binding arbitration in accordance with the rules and regulations of the NGFA.

Acting upon ADM’s complaint, the NGFA prepared an arbitration services contract and submitted it to ADM for execution. By certified mail dated October 20, 2008, the NGFA also sent to Risk Farms a letter providing notice of these proceedings with copies of ADM’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Risk Farms was signed for and received on October 31, 2008.

Upon receipt of the duly executed arbitration services contract from ADM, the NGFA then sent it with accompanying correspondence to Risk Farms by certified mail on November 24, 2008. The

certified mail return receipt confirmed that this mailing to Risk Farms was signed for and received on November 28, 2008.

On January 8, 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 November 24, 2008 and January 8, 2009 to Risk 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 Risk Farms, or any indication that a response was forthcoming, the NGFA sent yet another notice to Risk Farms 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 Risk Farms on February 17, 2009.

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

DEFAULT JUDGMENT

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

ADM 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." ADM properly executed and returned the arbitration services contract. Risk 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 Risk Farms Inc. 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 Risk Farms Inc. 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. Archer-Daniels-Midland Company d/b/a ADM/Ceres Solutions is awarded judgment against Risk Farms Inc. for \$97,800.00.
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