



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

ARBITRATION CASE NUMBER 2359

Plaintiff: Cargill, Incorporated, St. Louis, Mo.

Defendant: Darren Smith, Paragould, Ark.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Cargill, Incorporated (Cargill), requested the entry of a default judgment in the amount of \$1,243,955.71 against the defendant, Darren Smith (Mr. Smith). The default judgment is granted for the reasons set forth below.

Cargill submitted an arbitration complaint dated October 23, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Mr. Smith failed to perform on duly signed Cargill contract nos. 23704, 26859, 116492, 108892, 115693, 115467, 110726, 108889, and 20058 for delivery of no. 2 soft red winter wheat, contract nos. 23010, 26634, 126960, 108653, and 108652 for delivery of no. 2 yellow corn, and contract nos. 115182, 115168, 114146, 114035, and 111668 for delivery of no. 1 yellow soybeans.

Each contract indicated, “**Rules to Govern:** NGFA,” and under “PURCHASE TERMS,” stated as follows:

1. **NGFA Trade and Arbitration Rules.** Unless otherwise provided herein, this Contract shall be subject to the Trade Rules of the National Grain and Feed Association (NGFA), which Trade Rules are incorporated herein by reference. The parties agree that the sole forum for resolution of all disagreements or disputes between the parties arising under this Contract or relating to the formation of this Contract shall be arbitration proceedings before NGFA pursuant to NGFA Arbitration Rules. The decision and award determined by such arbitration shall be final and binding upon both parties and judgment upon the award may be entered in any court having jurisdiction thereof. Copies of the NGFA Trade and Arbitration Rules are available from Buyer upon request and are available at www.ngfa.org. [Emphasis in original].

Acting upon Cargill’s complaint, the NGFA prepared an arbitration services contract and submitted it to Cargill for execution. By certified mail dated November 10, 2008, the NGFA also sent to Mr. Smith a letter providing notice of these proceedings with copies of Cargill’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Mr. Smith was signed for and received on November 18, 2008.

Upon receipt of the duly executed arbitration services contract from Cargill, the NGFA then sent it with accompanying correspondence to Mr. Smith by certified mail on November 24, 2008. The certified mail return receipt confirmed that this mailing to Mr. Smith was signed for and received on December 1, 2008.

On December 19, 2008, the NGFA received a letter from Mr. Smith's counsel, which stated that, "Darren Smith is refusing to arbitrate."

On April 14, 2009, the NGFA forwarded to Mr. Smith additional documentation obtained from Cargill. The certified mail return receipt confirmed that this mailing was signed for and received on April 20, 2009.

On April 27, 2009, the NGFA received another letter from Mr. Smith's counsel which stated that, "Mr. Smith's position has not changed," and enclosed a copy of his previous letter.

DEFAULT JUDGMENT

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

Cargill 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." Cargill properly executed and returned the arbitration services contract. Mr. Smith refused to comply with the NGFA Arbitration Rules, and refused to properly 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 Darren Smith 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 Darren Smith is proper and warranted.

Therefore, on May 20, 2009, 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 pursuant to Section 5(e).

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. Cargill, Incorporated is awarded judgment against Darren Smith for \$1,243,955.71.
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: May 20, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary