



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

September 24, 2009

Arbitration Case Number 2363

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: Clark Farm #2, L.L.C./Brett Michael Clark

Factual and Procedural Background

The plaintiff, Cargill Inc. (Cargill), requested the entry of a default judgment in the amount of \$165,262.96 against the defendant, Clark Farm #2, L.L.C./Brett Michael Clark (Clark Farm). The default judgment was granted for the reasons set forth below.

Cargill submitted an arbitration complaint dated Oct. 24, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Clark Farm failed to perform on duly signed Cargill contract nos. 26723 and 26767 for delivery of #2 yellow corn and contract nos. 26810, 28261, 28341, and 29427¹ for delivery of #1 yellow soybeans.

The front of each contract stated, “**Rules to Govern:** NGFA,” and the back of each contract stated the following under “PURCHASE TERMS:”

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 judgement 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. In addition to any damages otherwise provided by law, Buyer shall be entitled to recovery of its attorney’s fees and costs. *[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 Nov. 10, 2008, the NGFA also sent to Clark Farm’s counsel 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 Clark Farm was signed for and received on Nov. 13, 2008.

On Dec. 4, 2008, Clark Farm’s counsel sent a letter to the NGFA, stating that a Cargill had also filed a lawsuit pertaining to the same dispute in the U.S. District Court for the Middle District of Louisiana, and the letter requested that arbitration proceedings be stayed pending the court’s ruling.

On Jan. 23, 2009, Cargill submitted to NGFA a copy of a Jan. 8, 2009 ruling by the United States District Court for the Middle District of Louisiana, ordering the parties to arbitrate the dispute. Cargill also submitted an amended arbitration complaint, which specifically increased the amount of damages claimed from \$127,950.00 to \$165,262.96.

Acting upon Cargill’s amended complaint, the NGFA prepared an amended arbitration services contract and submitted it to Cargill for execution. On Feb. 19, 2009, the NGFA also sent to Clark Farm’s counsel by certified mail a notice of these amended proceedings along with a copy of Cargill’s amended complaint and attachments. The certified mail return receipt confirmed that this mailing was signed for and received on Feb. 24, 2009.

Upon receipt of the duly executed arbitration services contract from Cargill, the NGFA then sent it with accompanying correspondence

¹ In its October 24, 2008 complaint, Cargill identified contract no. 29427 and attached documentation related to a different contract – contract no. 29473. In its January 23, 2009 amended complaint, Cargill identified contract no. 29473 and omitted the reference to contract no. 29427.

to Clark Farm's counsel by certified mail on March 6, 2009. The certified mail return receipt confirmed that this mailing to Clark Farm was signed for and received on March 9, 2009.

On April 20, 2009, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on April 22, 2009. The NGFA's letters of March 6 and April 20 to Clark Farm 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 Clark Farm, or any indication that a response was forthcoming, the NGFA sent yet another notice to Clark Farm on May 19, 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 Clark Farm on May 21, 2009.

The NGFA has yet to receive an executed arbitration services contract from Clark Farm, despite the order from the U.S. District Court and the repeated attempts by NGFA to contact Clark Farm.

Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of the contracts, the court order compelling arbitration, 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. Clark Farm 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 appeared that Clark Farm made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary found that entry of default judgment against Clark Farm was proper and warranted.

Therefore, on Aug. 19, 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. Cargill Inc. is awarded judgment against Clark Farm #2, L.L.C./Brett Michael Clark for \$165,262.96.
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: August 19, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary