



National Grain and Feed Association

Arbitration Decision

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ARBITRATION CASE NUMBER 2373

Plaintiff: Consolidated Grain and Barge Co., Cincinnati, Ohio

Defendant: Christopher Huff, Camden, Ohio

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Consolidated Grain and Barge Co. (CGB), requested the entry of a default judgment in the amount of \$44,890.69 against the defendant, Christopher Huff (Huff). The default judgment is granted for the reasons set forth below.

CGB submitted an arbitration complaint dated November 4, 2008 to the National Grain and Feed Association (NGFA). The complaint was filed pursuant to an October 31, 2008 court order from the Preble County Court of Common Pleas. The complaint alleged that Huff failed to perform on duly signed CGB contract nos. 70511-02 and 72233-01 for delivery of #2 yellow corn and contract no. 70557-01 for delivery of #2 soft red wheat.

The front of each contract stated, “**RULES, TERMS AND CONDITIONS INCLUDING BINDING ARBITRATION SET FORTH ON BACK ARE MADE PART HEREOF**” (Emphasis in original). The back of each contract also contained the following provision:

(1) Seller and Buyer agree that all disputes and controversies of any nature whatsoever between them with respect to this contract shall be arbitrated according to the Arbitration Rules of the National Grain & Feed Association, and that the decision and award determined thereunder shall be final and binding on Seller and Buyer.

Acting upon CGB’s complaint, the NGFA prepared an arbitration services contract and submitted it to CGB for execution. By certified mail dated November 14, 2008, the NGFA also sent to Huff a letter providing notice of these proceedings with copies of CGB’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Huff was signed for and received on November 17, 2008.

Upon receipt of the duly executed arbitration services contract from CGB, the NGFA then sent it with accompanying correspondence to Huff by certified mail on November 26, 2008. The certified mail return receipt confirmed that this mailing to Huff was signed for and received on December 1, 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 26, 2008 and January 8, 2009 to Huff 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.

On January 13, 2009, CGB sent a supplemental complaint to the NGFA, stating that, since submitting its original complaint, Huff had defaulted on another contract, no. 70528 for #2 yellow corn. The supplemental complaint brought the total damages claimed to \$53,838.09. Pursuant to this new complaint, the NGFA prepared an amended arbitration services contract and submitted it to CGB for execution. Upon receipt of the duly executed amended contract from CGB, the NGFA forwarded it to Huff for execution by certified mail on February 10, 2009, along with a copy of CGB's January 13 supplemental complaint. The certified mail return receipt confirmed that this mailing was signed for and received on February 12, 2009.

After still not receiving any response from Huff, or any indication that a response was forthcoming, the NGFA sent yet another notice to Huff on March 12, 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 Huff on March 16, 2009.

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

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 CGB's status as a NGFA active member.

CGB 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." CGB properly executed and returned the arbitration services contract. Huff 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 Huff 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 Huff 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. Consolidated Grain and Barge Co. is awarded judgment against Christopher Huff for \$53,838.09.
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