



National Grain and Feed Association

Arbitration Decision

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August 27, 2009

Arbitration Case Number 2379

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: Kyle Cullen, Evergreen, La.

Factual and Procedural Background

The plaintiff, Cargill Inc. (Cargill), requested the entry of a default judgment in the amount of \$32,163.94 against the defendant, Kyle Cullen (Cullen). The default judgment was granted for the reasons set forth below.

Cargill submitted an arbitration complaint dated Nov. 21, 2008 to the National Grain and Feed Association (NGFA), which alleged that Cullen failed to perform on duly signed Cargill contract nos. 28119 and 28251 for delivery of #2 sorghum and contract nos. 28123 and 28245 for delivery of #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. In addition to any damages otherwise provided by law, Buyer shall be entitled to recover of its attorney’s fees and costs.”

Acting upon Cargill’s complaint, the NGFA prepared an arbitration services contract and submitted it to Cargill for execution. By

certified mail dated Dec. 3, 2008, the NGFA also sent to Cullen 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 Cullen was signed for and received on Dec. 19, 2008.

On Dec. 16, 2009, Cargill sent to NGFA a letter amending its complaint in this case to include three additional contracts in dispute between the parties: contract no. 28624 for sorghum, no. 28605 for yellow soybeans, and no. 28673 for soft red wheat. Each of these contracts contained the same arbitration provisions as the original four contracts. The recalculated total damages in dispute were \$58,795.08.

The NGFA prepared an amended arbitration services contract and submitted it to Cargill for execution. On Jan. 8, 2009, the NGFA sent another notice to Cullen by certified mail along with copies of Cargill’s Dec. 16 and Dec. 17 letters and attachments. The certified mail return receipt confirmed that this mailing to Cullen was signed for and received on Jan. 19, 2009.

On Jan. 23, 2009, Cargill sent yet another letter to the NGFA, stating that two additional contracts were at issue (nos. 28531 and 28250 for soft red wheat), but that the damages claimed remained the same. The NGFA prepared another arbitration services contract and submitted it to Cargill for execution. On Feb. 19, 2009, the NGFA sent another notice to Cullen along with copies of Cargill’s Jan. 23 letter and attachments. The certified mail return receipt confirmed that this mailing to Cullen was signed for and received on Feb. 26, 2009.

Upon receipt of the duly executed arbitration services contract from Cargill, the NGFA forwarded it to Cullen by certified mail on March 6, 2009. The certified mail return receipt confirmed that this mailing was signed for and received on March 16, 2009.

On April 20, 2009, the NGFA sent another letter by certified mail. The certified mail return receipt confirmed that this mailing was signed for and received on April 28, 2009. The NGFA's letters of March 6 and April 20, 2009 to Cullen specifically provided notice that Sections 5(d) and (e) of the NGFA Arbitration Rules required that the signed contract be returned within fifteen (15) days.

After still not receiving any response from Cullen, or any indication that a response was forthcoming, the NGFA sent yet another notice to Cullen on May 19, 2009 by certified mail. 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.]

This mailing was returned unclaimed and resent to Cullen by First Class mail on June 16, 2009, along with accompanying correspondence.

The NGFA has yet to receive an executed arbitration services contract from Cullen, 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 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. Cullen 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 Cullen 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 Cullen is proper and warranted.

Therefore, on July 27, 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 Kyle Cullen for \$58,795.08.
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: July 27, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: **Charles M. Delacruz**
National Secretary