



National Grain and Feed Association

Arbitration Decision

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September 24, 2009

Arbitration Case Number 2402

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: Edeal Alfalfa Partnership and Travis Edeal, Overton, Neb.

Factual and Procedural Background

The plaintiff, Cargill Inc. (Cargill), requested the entry of a default judgment in the amount of \$714,125.00 against the defendants, Edeal Alfalfa Partnership and Travis Edeal (Edeal). The default judgment was granted for the reasons set forth below.

Cargill submitted an arbitration complaint dated Jan. 28, 2009 to the National Grain and Feed Association (NGFA). The complaint alleged that Edeal failed to perform on duly signed Cargill contract nos. 66320-1, 66320-2, 80462, 80274, 80463, 81086, 81201, 82534 for delivery of no. 2 yellow corn.

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, and all other grain contracts by and between Buyer and Seller, 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 any grain contract between Buyer and Seller or relating to the formation of any grain contract between Buyer and Seller 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 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 Feb. 17, 2009, the NGFA also sent to Edeal 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. This mailing was returned by the U.S. Postal Service “because it was not claimed by the addressee.”

Upon receipt of the duly executed arbitration services contract from Cargill, the NGFA then sent it with accompanying correspondence and a copy of the Feb. 17, 2009 mailing to Edeal by Federal Express delivery on March 6, 2009. Federal Express confirmed that this mailing to Edeal was delivered on March 11, 2009.

On April 20, 2009, the NGFA sent another letter to Edeal 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, 2009 to Edeal 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 April 23, 2009, the NGFA received correspondence from counsel for Edeal, which indicated that Edeal did not intend to proceed with the arbitration of this case and did not recognize any obligation to do so.

Therefore, on May 20, 2009, the NGFA issued a default judgment against Edeal Alfalfa Partnership and Travis Edeal.

On June 11, 2009, counsel for Edeal contacted NGFA by telephone to discuss the identification of Travis Edeal as an individual party in the default judgment. Although the arbitration complaint filed by Cargill that was the basis of the default judgment had specifically named Travis Edeal, NGFA agreed to permit him another opportunity to avoid a default judgment and participate in these proceedings.

Therefore, the NGFA prepared another arbitration services contract and submitted it to the parties for execution. Upon receipt of the new, signed contract from Cargill, it was forwarded to Edeal's counsel on June 19, 2009. Because Edeal's counsel had raised some potential issues of a substantive nature, NGFA's accompanying correspondence stated as follows:

Whether or not either, both, or neither of the named defendants – Travis Edeal or Edeal Alfalfa Partnership – bear any responsibility for this case is a substantive question for which the arbitration process was made available to resolve. The default judgment was based entirely upon the defendants' failure to

respond to the plaintiff's complaint without NGFA having had the opportunity to consider the substance or merits of the defendants' positions.

On July 9, 2009, Edeal's counsel sent a letter to NGFA which clearly indicated that Travis Edeal had no sincere intention to participate in these proceedings.

The NGFA has yet to receive an executed arbitration services contract from the defendants, despite having given them adequate notification and numerous opportunities to respond.

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. Edeal refused to comply with the NGFA Arbitration Rules, and refused to properly respond to 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 was clear that both Edeal Alfalfa Partnership and Travis Edeal 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 Edeal Alfalfa Partnership and Travis Edeal 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." The defendant did not apply to vacate this default judgment.

The Award

THEREFORE, IT IS ORDERED THAT:

1. Cargill Inc. is awarded judgment against Edeal Alfalfa Partnership and Travis Edeal for \$714,125.
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