



National Grain and Feed Association

Arbitration Decision

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May 17, 2012

Arbitration Case Number 2407B

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: Clark Farm #2 LLC, Melville, La.

Factual and Procedural Background

The plaintiff, Cargill Inc. (Cargill), requested the entry of a default judgment in the amount of \$21,325.00 against the defendant, Clark Farm #2 LLC (Clark Farm). The default judgment was granted for the reasons set forth below.

On Oct. 23, 2009, the National Grain and Feed Association (NGFA) entered a default judgment in this case against Clark Farm #2 with respect to two soybean contracts and one sorghum contract. Subsequently, on Oct. 17, 2011, the United States District Court for the Middle District of Louisiana granted Cargill's motion to compel arbitration with respect to the remaining two contracts in dispute.

Cargill submitted an amended arbitration complaint dated Oct. 19, 2011 to NGFA. The complaint alleged that Clark Farm failed to perform on Cargill contract no. 27199 for #2 soft red winter wheat and contract no. 28340 for delivery of #1 yellow soybeans.

Acting upon Cargill's complaint, the NGFA prepared an amended arbitration services contract and submitted it to Cargill for execution. By certified mail dated Dec. 19, 2011, NGFA also sent to Clark Farm a letter providing notice that NGFA would proceed with the case pursuant to the court order. The certified mail return receipt confirmed that this mailing to Clark Farm's counsel was signed for and received on Dec. 22, 2011.

Upon receipt of the duly executed arbitration services contract from Cargill, the NGFA then sent it with accompanying correspondence to Clark Farm's counsel by certified mail on Jan. 6, 2012. The certified mail return receipt confirmed that this mailing was signed for and received on Jan. 9, 2012.

On Feb. 13, 2012, the NGFA sent to Clark Farm's counsel another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Feb. 15, 2012. The NGFA's letters of Jan. 6 and Feb. 13, 2012 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's counsel on April 2, 2012 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 the defendant thus far, we must anticipate that the defendant does not intend to respond. ***This is our last attempt to elicit a response from you. A default judgment may be entered against the defendant 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 April 4, 2012.

On April 4, 2012, Clark Farm's counsel sent NGFA a letter indicating that it did not intend to execute the arbitration services contract or pay the arbitration fee.

Default Judgment

The NGFA established jurisdiction over this matter pursuant to the terms of the court order 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 respond to any requests from the NGFA for the executed contract.

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 April 17, 2012, 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 LLC/Brett Michael Clark for \$21,325.
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: April 17, 2012

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary