



National Grain and Feed Association

Arbitration Decision

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December 3, 2009

Arbitration Case Number 2437

Plaintiff: DeBruce Feed Ingredients Inc., Kansas City, Mo.

**Defendant: CAG Cimarron Dairy, L.P., Cimarron, Kan.
CAG West Plains Dairy, LLC, Scott City, Kan.**

Factual and Procedural Background

The plaintiff, DeBruce Feed Ingredients Inc. (DeBruce), requested the entry of a default judgment in the amount of \$132,158.50 against the defendants, CAG Cimarron Dairy, L.P. (Cimarron) and CAG West Plains Dairy, LLC (West Plains). The default judgment was granted for the reasons set forth below.

DeBruce submitted an arbitration complaint dated May 7, 2009 to the National Grain and Feed Association (NGFA). The complaint alleged that Cimarron failed to perform on duly signed DeBruce contract no. 42736 for delivery of cottonseed and that West Plains failed to perform on duly signed DeBruce contract no. 42737 for delivery of cottonseed.

The contracts contained the following clause under "Additional Term and Condition of Sale":

This contract is made and entered into in the State of Missouri, and the relationships between the applicant, the company, and the guarantor shall be interpreted and construed in accordance with, and governed by, the laws of the State of Missouri without regard to conflict of law rules. Buyer and Seller agree that all controversies between them under this contract be settled by arbitration in accordance with the rules and regulations of the National Grain and Feed Association pursuant to its arbitration rules. Buyer and Seller agree that judgment may be entered upon any arbitration award in any court of competent jurisdiction.

Acting upon DeBruce's complaint, the NGFA prepared an arbitration services contract and submitted it to DeBruce for

execution. By certified mail dated May 28, 2009, the NGFA also sent to the defendants a letter providing notice of these proceedings with copies of DeBruce's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipts confirmed that this mailing was signed for and received on May 30, 2009 by Cimarron and on June 1, 2009 by West Plains.

Upon receipt of the duly executed arbitration services contract from DeBruce, the NGFA then sent it with accompanying correspondence to the defendants by certified mail on June 10, 2009. The certified mail return receipt confirmed that this mailing was signed for and received by Cimarron on June 13, 2009 and by West Plains on June 15, 2009.

On June 18, 2009, a representative for the defendants contacted the NGFA by telephone. He indicated that the defendants did not dispute that they owed the money to DeBruce and were attempting to resolve the dispute. He also indicated that the defendants did not intend to participate in the arbitration proceeding.

After not hearing further, on July 24, 2009, the NGFA sent to the defendants another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered to West Plains on July 27, 2009 and to Cimarron on July 28, 2009. This letter confirmed that the defendants did not intend to participate in the arbitration proceeding, and stated that, based upon the defendants' response, a default judgment could be entered at any time.

Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of the contracts and by way of DeBruce's status as a NGFA active member.

DeBruce 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." DeBruce properly executed and returned the arbitration services contract. CAG

decided not to arbitrate this dispute and, instead, to be subject to this default judgment.

Therefore, on Nov. 12, 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 judgment pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. DeBruce Feed Ingredients Inc. is awarded judgment against CAG Cimarron Dairy, L.P. and CAG West Plains Dairy, LLC for \$132,158.50.
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: November 12, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

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