



National Grain and Feed Association

Arbitration Decision

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May 20, 2010

Arbitration Case Number 2461

Plaintiff: The Scoular Co., Minneapolis, Minn.

Defendant: Flintrock Feeders, Ltd., Gruver, Tex.

Factual and Procedural Background

The plaintiff, The Scoular Co. (Scoular), requested the entry of a default judgment in the amount of \$112,597.93 against the defendant, Flintrock Feeders, Ltd. (Flintrock Feeders). The default judgment was granted for the reasons set forth below.

Scoular submitted an arbitration complaint dated July 7, 2009 to the National Grain and Feed Association (NGFA). The complaint alleged that Flintrock Feeders failed to fully perform on duly signed Scoular contract no. 32922 for delivery of #2 yellow corn. The contract specified that NGFA Trade Rules and Arbitration would apply.

Acting upon Scoular's complaint, the NGFA prepared an arbitration services contract and submitted it to Scoular for execution. By certified mail dated Aug. 4, 2009, the NGFA also sent to Flintrock Feeders a letter providing notice of these proceedings with copies of Scoular's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules.

Upon receipt of the duly executed arbitration services contract from Scoular, the NGFA then sent it with accompanying correspondence to Flintrock Feeders by certified mail on Aug. 21, 2009. NGFA's Aug. 4 and Aug. 21, 2009 mailings to Flintrock Feeders were returned unclaimed. On Sept. 24, 2009, NGFA sent both mailings by Federal Express delivery, along with accompanying correspondence, to Flintrock Feeders. On Sept. 29, 2009, NGFA was provided with a different address for Flintrock Feeders.

Also on Sept. 29, 2009, NGFA then sent a notice to Flintrock Feeders by certified mail along with copies of all previous correspondence to this new address. This mailing was yet again returned to NGFA unclaimed, and resent by Federal Express delivery on Oct. 27, 2009. Federal Express confirmed that this

mailing, with copies of all previously submitted materials, was delivered to Flintrock Feeders on Oct. 29, 2009.

On Dec. 17, 2009, the NGFA sent to Flintrock Feeders another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Dec. 21, 2009. The NGFA's letters of Oct. 27 and Dec. 17, 2009 to Flintrock Feeders 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 Flintrock Feeders, or any indication that a response was forthcoming, the NGFA sent yet another notice to Flintrock Feeders on Feb. 2, 2010 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 Flintrock Feeders on Feb. 4, 2010.

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

Default Judgment

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

Scoular 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." Scoular properly executed and returned the arbitration services contract. Flintrock Feeders 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 Flintrock Feeders 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 Flintrock Feeders was proper and warranted.

Therefore, on April 28, 2010, 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. The Scoular Co. is awarded judgment against Flintrock Feeders, Ltd. for \$112,597.93.
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 28, 2010

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary