



National Grain and Feed Association

Arbitration Decision

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May 20, 2010

Arbitration Case Number 2467

Plaintiff: MaxYield Cooperative, West Bend, Iowa

Defendant: Christopher Hardt d/b/a Hardt Farms, Swea City, Iowa

Factual and Procedural Background

The plaintiff, MaxYield Cooperative (MaxYield), requested the entry of a default judgment in the amount of \$125,503.96 against the defendant, Christopher Hardt d/b/a Hardt Farms (Hardt). The default judgment was granted for the reasons set forth below.

MaxYield submitted an arbitration complaint dated July 23, 2009 to the National Grain and Feed Association (NGFA). The complaint alleged that Hardt failed to perform on duly signed MaxYield contract nos. 49946, 44189, 47713, and 49805 for delivery of #2 yellow corn.

Each of the contracts contained the following provision:

The parties to this Contract agree that the sole remedy for resolution of any and all disagreements or disputes arising under this Contract shall be through arbitration proceedings before the National Grain and Feed Association (NGFA) pursuant to the NGFA Arbitration Rules; provided that the agreement of the parties shall be subject to an NGFA agreement to arbitrate such dispute. The decision and award determined through such arbitration shall be final and binding upon the Buyer and Seller. Judgment upon the arbitration award may be entered and enforced in any court having jurisdiction thereof. (Copies of the NGFA Arbitration rules are available upon request; or by contracting the National Grain and Feed Association, 1201 New York Ave., N.W., Suite 830, Washington, DC 20005.)

Acting upon MaxYield's complaint, the NGFA prepared an arbitration services contract and submitted it to MaxYield for execution. By certified mail dated Aug. 4, 2009, the NGFA also sent to Hardt a letter providing notice of these proceedings with

copies of MaxYield's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. This mailing was returned unclaimed.

Upon receipt of the duly executed arbitration services contract from MaxYield, the NGFA then sent it with accompanying correspondence and a copy of the Aug. 4, 2009 mailing to Hardt by Federal Express delivery on Sept. 22, 2009. Federal Express confirmed that this mailing to Hardt was delivered on Sept. 24, 2009.

On Oct. 27, 2009, the NGFA sent to Hardt another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Oct. 29, 2009. The NGFA's letters of Sept. 22 and Oct. 27, 2009 to Hardt 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 Hardt, or any indication that a response was forthcoming, the NGFA sent yet another notice to Hardt on Dec. 17, 2009 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 Hardt on Dec. 21, 2009.

On Jan. 11, 2010, Hardt responded by email to NGFA's Dec. 17 mailing. He requested that copies of the previous mailings, including the Arbitration Services Contract, be resent by regular mail, and he provided an alternate address. On the same day, NGFA mailed to Hardt another set of copies of the previous mailings as requested.

On Jan. 20, 2010, Hardt confirmed by email to NGFA that he had received the mailing. He stated, "I am sending back the form and fee for the mediation today." Despite this assurance, NGFA has never heard further from Hardt.

In his Jan. 20 email, Hardt also indicated that he was attempting "to resolve this directly with [MaxYield]." Subsequently, MaxYield indicated that while the parties had communicated on various occasions, no settlement discussions were occurring. MaxYield requested that a default judgment be entered.

Default Judgment

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

MaxYield 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." MaxYield properly executed and returned the arbitration services contract. Hardt 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 Hardt 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 Hardt 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. MaxYield Cooperative is awarded judgment against Christopher Hardt d/b/a Hardt Farms for \$125,503.96.
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