



National Grain and Feed Association

Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922

Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

February 24, 2011

Arbitration Case Number 2520

Plaintiff: VP Holdings Corporation d/b/a Vita Plus - Fall River, Madison, Wis.

Defendant: Rick Cabrito d/b/a Cabrito Family Dairy, Juneau, Wis.

Factual and Procedural Background

The plaintiff, VP Holdings Corporation d/b/a Vita Plus - Fall River (Vita Plus), requested the entry of a default judgment in the amount of \$7,059.56 against the defendant, Rick Cabrito d/b/a Cabrito Family Dairy (Cabrito). The default judgment was granted for the reasons set forth below.

Vita Plus submitted an arbitration complaint dated Aug. 26, 2010 to the National Grain and Feed Association (NGFA). The complaint alleged that Cabrito failed to perform on duly signed Vita Plus contract no. 4228 for delivery of #2 yellow corn.

The contract contained the following provision:

Except as otherwise provided herein, this Contract shall be subject to the Grain Trade Rules (the "Rules") of the National Grain and Feed Association ("NGFA"), which are incorporated herein. In the case of conflict between the Rules of the NGFA and this Contract, this Contract shall control. The parties to this Contract agree that the sole remedy for resolution of any and all disagreements or disputes arising under or related to this Contract shall be through arbitration proceedings before the NGFA pursuant to the NGFA® Arbitration Rules. The decision and award determined through such arbitration shall be final and binding upon Buyer and Seller. Judgment upon the arbitration award may be entered and enforced in any court having jurisdiction thereof.

Acting upon Vita Plus's complaint, NGFA prepared an arbitration services contract and submitted it to Vita Plus for execution. By certified mail dated Sept. 24, 2010, NGFA also sent to Cabrito a letter providing notice of these proceedings with copies of Vita Plus's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Cabrito was signed for and received on Sept. 27, 2010.

Upon receipt of the duly executed arbitration services contract from Vita Plus, NGFA then sent it with accompanying correspondence to Cabrito by certified mail on Oct. 15, 2010. The certified mail return receipt confirmed that this mailing to Cabrito was signed for and received on Oct. 18, 2010.

On Nov. 9, 2010, NGFA sent to Cabrito another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Nov. 11, 2010. NGFA's letters of Oct. 15 and Nov. 9 to Cabrito 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 Cabrito, or any indication that a response was forthcoming, NGFA sent yet another notice to Cabrito on Jan. 7, 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 Cabrito on Jan. 11, 2010.

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

Default Judgment

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

Vita Plus 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." Vita Plus properly executed and returned the arbitration services contract. Cabrito refused to comply with the NGFA Arbitration Rules, and refused to respond to any requests from 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 Cabrito 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 Cabrito was proper and warranted.

Therefore, on Jan. 21, 2011, 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. VP Holdings Corporation d/b/a Vita Plus - Fall River is awarded judgment against Rick Cabrito d/b/a Cabrito Family Dairy for \$7,059.56.
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: January 21, 2011

NATIONAL GRAIN AND FEED ASSOCIATION

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