



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

July 28, 2011

Arbitration Case Number 2545

Plaintiff: Express Grain Terminals LLC, Sidon, Miss.

Defendant: Harold J. Wheeler, Valencia Wheeler, Hiawatha Martin and Wheeler Farms, Leflore County, Miss.

Factual and Procedural Background

The plaintiff, Express Grain Terminals LLC, requested the entry of a default judgment in the amount of \$421,677.33 against the defendants, Harold J. Wheeler, Valencia Wheeler, Hiawatha Martin and Wheeler Farms. The default judgment was granted for the reasons set forth below.

The plaintiff submitted an arbitration complaint dated Feb. 1, 2011 to the National Grain and Feed Association (NGFA). The complaint alleged that the defendants failed to perform on duly signed Express Grain contract nos. 790, 791, 792, 861, 894, 895, 896, 903, 904, and 905 for delivery of #1 yellow soybeans.

Each of the contracts contained the following provision under "TERMS AND CONDITIONS":

Except as otherwise expressly provided herein, this contract shall be subject to the National Grain and Feed Association's Trade Rules applicable on the date this purchase contract is signed. (NGFA Trade Rules and Arbitration Rules are available upon request.) 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) under NGFA Arbitration Rules. 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. This contract shall be governed by, and construed in accordance with, the laws of the State of Mississippi if a matter addressed by the NGFA's Trade Rules or the Arbitration Rules is at issue.

Acting upon the plaintiff's complaint, NGFA prepared an arbitration services contract and submitted it to the plaintiff for execution. By certified mail dated March 7, 2011, NGFA also sent to the defendants a letter providing notice of these proceedings with copies of the plaintiff'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 the plaintiff, NGFA then sent it with accompanying correspondence and a copy of the March 7, 2011 mailing to the defendants by Federal Express delivery on March 25, 2011. Federal Express confirmed that this mailing was delivered to the defendants on March 29, 2011.

On April 27, 2011, NGFA sent to the defendants another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on April 29, 2011. NGFA's letters of March 25 and April 27, 2011 to the defendants 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 the defendants, or any indication that a response was forthcoming, NGFA sent yet another notice to The defendants on June 1, 2011 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 the defendants on June 3, 2011.

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

Default Judgment

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

The plaintiff 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." The plaintiff properly executed and returned the arbitration services contract. The defendants 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 the defendants 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 the defendants was proper and warranted.

Therefore, on July 6, 2011, NGFA entered a default judgment against the defendants. The defendants were 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 defendants did not apply to vacate the default judgment pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. Express Grain Terminals, LLC is awarded judgment against Harold J. Wheeler, Valencia Wheeler, Hiawatha Martin and Wheeler Farms for \$421,677.33.
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: July 6, 2011

NATIONAL GRAIN AND FEED ASSOCIATION

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