



National Grain and Feed Association

Arbitration Decision

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November 3, 2011

Arbitration Case Number 2548

Plaintiff: Bayou Grain & Chemical Corp., Parkdale, Ark.

Defendant: Larry Dean Williams, Jr., Bonita, La.

Factual and Procedural Background

The plaintiff, Bayou Grain & Chemical Corp. (Bayou), requested the entry of a default judgment in the amount of \$15,315.07 against the defendant, Larry Dean Williams, Jr. (Williams). The default judgment was granted for the reasons set forth below.

Bayou submitted an arbitration complaint dated Feb. 9, 2011 to the National Grain and Feed Association (NGFA). The complaint alleged that Williams failed to perform on duly signed Bayou contract no. 27154.01 for delivery of #2 yellow soybeans.

The front of each contract contained the following clause:

IMPORTANT NOTICE: The parties' contract also is subject to the terms and conditions set forth on page 2 (which may be the reverse side hereof) including but not limited to arbitration of any disputes. The contract also is subject to the terms of the Buyer's Forward Contract Trading Agreement, which is incorporated herein as if fully restated. The terms of the contract cannot be altered or amended without the express consent of Buyer.

Also, the back of each contract contained the following provision:

NGFA® TRADE RULES AND ARBITRATION TO APPLY: Except as otherwise provided herein, this contract shall be subject to the Trade Rules of the National Grain and Feed Association (NGFA), which are incorporated herein. The parties agree that the sole remedy for resolution of any and all disagreements or disputes arising under or related to this contract (including, but not limited to, any statutory or tort claims

arising from the relationship between the parties) 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 the parties. Judgment upon the arbitration award may be entered and enforced in any court having jurisdiction thereof. The parties agree that any arbitration conducted hereunder shall be governed by the Federal Arbitration Act, 9 United States Code §§ 1-16, as now existing or hereinafter amended. The contract shall otherwise be governed by, and construed in accordance with, the laws of the State of Arkansas (with the exception of the State of Arkansas' conflict of laws statutes or caselaw).

Acting upon Bayou's complaint, NGFA prepared an arbitration services contract and submitted it to Bayou for execution. By certified mail dated March 7, 2011, NGFA also sent to Williams a letter providing notice of these proceedings with copies of Bayou's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The United States Postal Service confirmed that this mailing was delivered to Williams on March 24, 2011.

Upon receipt of the duly executed arbitration services contract from Bayou, NGFA then sent it with accompanying correspondence to Williams by certified mail on March 25, 2011. This mailing was returned unclaimed. On June 16, 2011, NGFA sent Williams a copy of the March 25 mailing by first class mail.

On July 11, 2011, NGFA sent to Williams another letter by first class mail. NGFA's letters of June 16 and July 11, 2011 to Williams 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 Williams, or any indication that a response was forthcoming, NGFA sent yet another notice to Williams on Aug. 4, 2011. 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].

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

Default Judgment

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

Bayou 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." Bayou properly executed and returned the arbitration services contract. Williams 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 Williams 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 Williams was proper and warranted.

Therefore, on Oct. 5, 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. Bayou Grain & Chemical Corp. is awarded judgment against Larry Dean Williams, Jr. for \$15,315.07.
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: October 5, 2011

NATIONAL GRAIN AND FEED ASSOCIATION

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