



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

March 26, 2012

Arbitration Case Number 2588

Plaintiff: Gavilon Grain LLC, Omaha, Neb.

Defendant: Trihus Farms, Blooming Prairie, Minn.

Factual and Procedural Background

The plaintiff, Gavilon Grain LLC (Gavilon), requested the entry of a default judgment in the amount of \$165,973.88 against the defendant, Trihus Farms (Trihus Farms). The default judgment was granted for the reasons set forth below.

Gavilon submitted an arbitration complaint dated Sept. 20, 2011 to the National Grain and Feed Association (NGFA). The complaint alleged that Trihus Farms failed to perform on duly signed Gavilon contract nos. M800432, M800433, M800435, M800437 and M800438 for delivery of #2 yellow corn, and contract no. M800439 for delivery of #1 yellow soybeans.

Each contract indicated, "Rules to apply: NGFA," and under "TERMS AND CONDITIONS," stated as follows:

CONTROVERSIES: Controversies and/or other disagreements between Buyer and Seller arising under this Contract shall be settled by arbitration which shall be a condition precedent to any right of legal action that either Buyer or Seller may have against the other party. Any arbitration shall be in accordance with the rules of the National Grain and Feed Association [NGFA]. At the time notice of arbitration is served by either Buyer or Seller upon the other, (i) if either is a member of NGFA, the NGFA Arbitration Committee shall serve as the arbitrator; (ii) if neither is a member of the NGFA, the American Arbitration Association shall serve as the arbitrator.

Acting upon Gavilon's complaint, NGFA prepared an arbitration services contract and submitted it to Gavilon for execution. By certified mail dated Oct. 4, 2011, NGFA also sent to Trihus Farms a letter providing notice of these proceedings with copies of Gavilon'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 Gavilon, NGFA then sent it with accompanying correspondence and a copy of the October 4 mailing to Trihus Farms by Federal Express delivery on Oct. 31, 2011. Federal Express confirmed that this mailing was delivered on Nov. 2, 2011.

On Nov. 29, 2011, NGFA sent to Trihus Farms another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Dec. 1, 2011. NGFA's letters of Oct. 31 and Nov. 29 to Trihus Farms 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 Trihus Farms, or any indication that a response was forthcoming, NGFA sent yet another notice to Trihus Farms on Dec. 19, 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 Trihus Farms on Dec. 21, 2011.

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

Default Judgment

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

Gavilon 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." Gavilon properly executed and returned the arbitration services contract. Trihus Farms 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 Trihus Farms 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 Trihus Farms was proper and warranted.

Therefore, on Feb. 1, 2012, 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. Gavilon Grain LLC is awarded judgment against Trihus Farms for \$165,973.88.
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: February 1, 2012

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary