



National Grain and Feed Association

Arbitration Decision

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May 17, 2012

Arbitration Case Number 2595

Plaintiff: West Plains Co., Kansas City, Mo.

Defendant: Paul Rosberg, Wausa, Neb.

Factual and Procedural Background

The plaintiff, West Plains Co. (West Plains), requested the entry of a default judgment in the amount of \$167,908.77 against the defendant, Paul Rosberg (Rosberg). The default judgment was granted for the reasons set forth below.

West Plains submitted an arbitration complaint dated Oct. 19, 2011 to the National Grain and Feed Association (NGFA). The complaint alleged that Rosberg failed to perform on duly signed West Plains contract no. 201298 for delivery of organic yellow corn.

The contract stated, “THIS CONTRACT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES” (Emphasis in original). It also contained the following provision under “STANDARD TERMS AND CONDITIONS”:

22) Seller and Buyer agree that all disputes and controversies of any nature whatsoever between them with respect to this contract, or any other commodity contract between the parties, must be arbitrated according to the arbitration rules of the NGFA, and that the decision and award determined there under will be final and Binding on Seller and Buyer.

Acting upon West Plains’s complaint, NGFA prepared an arbitration services contract and submitted it to West Plains for execution. By certified mail dated Oct. 28, 2011, NGFA also sent to Rosberg a letter providing notice of these proceedings with copies of West Plains’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 West Plains, NGFA then sent it with accompanying

correspondence and a copy of the Oct. 28, 2011 mailing and attachments to Rosberg by Federal Express delivery on Nov. 23, 2011. Federal Express confirmed that this mailing was delivered to Rosberg on Nov. 28, 2011.

On Dec. 19, 2011, NGFA sent to Rosberg another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Dec. 21, 2011. NGFA’s letters of Nov. 23 and Dec. 19, 2011 to Rosberg 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 Rosberg, or any indication that a response was forthcoming, NGFA sent yet another notice to Rosberg on Feb. 13, 2012 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 Rosberg on Feb. 15, 2012.

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

Default Judgment

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

West Plains 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." West Plains properly executed and returned the arbitration services contract. Rosberg 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 Rosberg 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 Rosberg was proper and warranted.

Therefore, on April 17, 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. West Plains Co. is awarded judgment against Paul Rosberg for \$167,908.77.
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 17, 2012

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary