



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

May 17, 2012

Arbitration Case Number 2610

Plaintiff: Valero Grain Marketing LLC, San Antonio, Tex.

Defendant: Rick Nielsen, Gilmore City, Iowa

Factual and Procedural Background

The plaintiff, Valero Grain Marketing LLC (Valero), requested the entry of a default judgment in the amount of \$46,450 against the defendant, Rick Nielsen (Nielsen). The default judgment was granted for the reasons set forth below.

On Jan. 9, 2012, the Iowa District Court for Webster County granted Valero's application to compel arbitration, ordering that the parties submit their claims to binding arbitration before NGFA.

Valero submitted an arbitration complaint dated Jan. 17, 2012 to the National Grain and Feed Association (NGFA). The complaint alleged that Nielsen failed to perform on duly signed Valero contract nos. 4003000707, 4003000842, and 4003000844 for delivery of #2 yellow corn.

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

[21] 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 by the National Grain & Feed Association according

to the Arbitration Rules of the National Grain & Feed Association, and that the decision and award determined there under will be final and binding on Seller and Buyer.

Acting upon Valero's complaint, NGFA prepared an arbitration services contract and submitted it to Valero for execution. By certified mail dated Jan. 27, 2012, NGFA also sent to Nielsen a letter providing notice of these proceedings with copies of Valero's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Nielsen was signed for and received on Jan. 31, 2012.

Upon receipt of the duly executed arbitration services contract from Valero, NGFA then sent it with accompanying correspondence to Nielsen by certified mail on Feb. 15, 2012. The certified mail return receipt confirmed that this mailing to Nielsen was signed for and received on Feb. 21, 2012.

On Feb. 23, 2012, Nielsen contacted NGFA by telephone. In this conversation, he indicated that he did not intend to comply with NGFA arbitration procedures.

Default Judgment

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

Valero 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." Valero properly executed and returned the arbitration services contract. Nielsen 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 Nielsen 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 Nielsen 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. Valero Grain Marketing LLC is awarded judgment against Rick Nielsen for \$46,450.
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