



National Grain and Feed Association

Arbitration Decision

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August 21, 2012

Arbitration Case Number 2614

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 \$26,025 against the defendant, Trihus Farms (Trihus Farms). The default judgment is granted for the reasons set forth below.

Gavilon submitted an arbitration complaint dated Jan. 30, 2012 to the National Grain and Feed Association (NGFA). The complaint alleged that Trihus Farms failed to perform on duly signed Gavilon contract nos. M800467 and M800469 for delivery of #2 yellow corn and contract no. M800468 for delivery of #1 yellow soybeans.

Each of the contracts stated: "Rules to apply: NGFA." Each contract also contained the following provision under "Terms and Conditions":

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 Feb. 24, 2012, 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. The certified mail return receipt confirmed that this mailing to Trihus Farms was signed for and received on March 7, 2012.

Upon receipt of the duly executed arbitration services contract from Gavilon, NGFA then sent it with accompanying correspondence to Trihus Farms by certified mail on March 30, 2012. The certified mail return receipt confirmed that this mailing to Trihus Farms was signed for and received on April 2, 2012.

On May 10, 2012, NGFA sent to Trihus Farms another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on May 14, 2012. NGFA's letters of March 30, 2012 and May 10, 2012 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 June 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 Trihus Farms on June 15, 2012.

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 appears 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 finds that entry of default judgment against Trihus Farms is proper and warranted.

Therefore, on July 18, 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 pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. Gavilon Grain LLC is awarded judgment against Trihus Farms for \$26,025.
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 18, 2012

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary