



National Grain and Feed Association

Arbitration Decision

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October 18, 2012

Arbitration Case Number 2627

Plaintiff: The Andersons Inc., Maumee, Ohio

Defendant: Fred Cornelius, Paw Paw, Mich.

Factual and Procedural Background

The plaintiff, The Andersons Inc. (The Andersons), requested the entry of a default judgment in the amount of \$6,043.09 against the defendant, Fred Cornelius (Cornelius). The default judgment is granted for the reasons set forth below.

The Andersons submitted an arbitration complaint dated April 5, 2012 to the National Grain and Feed Association (NGFA). The complaint alleged that Cornelius failed to perform on The Andersons duly signed contracts nos. 51442 and 52492.

Each of the contracts stated: "The seller acknowledges confirmation of this purchase by Buyer, as noted above, and both parties accept the additional terms on the reverse hereof." Each contract also contained the following provision under "PURCHASE CONTRACT TERMS:"

5. Both parties agree: (A) THIS CONTRACT IS MADE IN ACCORDANCE WITH THE APPLICABLE GRAIN TRADE RULES OF THE NATIONAL GRAIN AND FEED ASSOCIATION (A COPY WILL BE PROVIDED UPON REQUEST) EXCEPT AS MODIFIED HEREIN, AND THE PARTIES WILL BE BOUND THEREBY; AND (B) ANY DISPUTES OR CONTROVERSIES ARISING OUT OF THIS CONTRACT SHALL BE ARBITRATED BY THE NATIONAL GRAIN AND FEED ASSOCIATION, PURSUANT TO ITS ARBITRATION RULES. THE DECISION AND AWARD DETERMINED THROUGH SUCH ARBITRATION SHALL BE FINAL AND BINDING UPON THE BUYER AND SELLER. JUDGEMENT UPON THE ARBITRATION AWARD MAY BE ENTERED AND ENFORCED IN ANY COURT HAVING JURISDICTION THEREOF.

Acting upon The Andersons' complaint, the NGFA prepared an arbitration services contract and submitted it to The Andersons for execution. By certified mail dated May 4, 2012, the NGFA also sent to Cornelius a letter providing notice of these proceedings with copies of The Andersons' complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Cornelius was signed for and received on May 9, 2012.

Upon receipt of the duly executed arbitration services contract from The Andersons, the NGFA submitted it to Cornelius by certified mail on May 24, 2012. The certified mail return receipt confirmed that this mailing to Cornelius was signed for and received on June 5, 2012.

On June 21, 2012, NGFA sent to Cornelius another letter by certified mail. The certified mail return receipt confirmed that this mailing was delivered on June 25, 2012. NGFA's letters of May 24 and June 21, 2012 to Cornelius 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 not receiving any response from Cornelius to the June 21 mailing, or any indication that a response was forthcoming, on July 17, 2012, the NGFA sent a letter by certified mail. 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.]

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

The certified mail return receipt confirmed that this mailing was delivered to Cornelius on July 19, 2012.

Default Judgment

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

The Andersons 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." The Andersons properly executed and returned the arbitration services contract. Cornelius refused to comply with the NGFA Arbitration Rules, and refused to respond to any arbitration-related mailings.

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 Cornelius 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 Cornelius is proper and warranted.

Therefore, on Oct. 15, 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. The Andersons Inc. is awarded judgment against Fred Cornelius for \$6,043.09.
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 15, 2012

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary