



National Grain and Feed Association

Arbitration Decision

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June 27, 2013

Arbitration Case Number 2654

Plaintiff: Conserv FS Inc., Sycamore, Ill.

Defendant: Anthony Beck, Martinsville, Ind.

Factual and Procedural Background

The plaintiff, Conserv FS Inc. (Conserv), requested the entry of a default judgment in the amount of \$1,528,174 against the defendant, Anthony Beck (Beck). The default judgment is granted for the reasons set forth below.

Conserv submitted an arbitration complaint dated Oct. 3, 2012 to the National Grain and Feed Association (NGFA). The complaint alleged that Beck failed to perform on duly signed Conserv contract nos. 3005001, 3005015 and 3005018 for U.S. #2 yellow corn.

Each CONFIRMATION OF GRAIN PURCHASE CONTRACT stated:

14. Arbitration of Disputes. The parties agree that the sole remedy for resolution of any and all disagreements, disputes or controversies arising under this Contract shall be resolved through arbitration proceedings before the National Grain and Feed Association (“NGFA”) pursuant to NGFA Arbitration Rules. The decision and award determined through such arbitration shall be final and binding upon Buyer and Seller. Judgment upon the arbitration award may be entered and enforced in any court having jurisdiction thereof. NGFA Trade rules shall apply.

Acting upon Conserv’s complaint, NGFA prepared an arbitration services contract and submitted it to Conserv for execution. By certified mail dated Oct. 11, 2012, NGFA also sent to Beck a letter providing notice of these proceedings with copies of Conserv’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Beck was signed for and received on Oct. 15, 2012.

Upon receipt of the duly executed arbitration services contract from Conserv, NGFA then sent the arbitration services contract with accompanying correspondence to Beck by certified mail on Oct. 23, 2012. The certified mail return receipt confirmed that this mailing to Beck was signed for and received on Oct. 26, 2012.

On Dec. 4, 2012, NGFA sent to Beck another letter by certified mail. The certified mail return receipt confirmed that this mailing was delivered on Dec. 7, 2012. NGFA’s letters of Oct. 23, 2012 and Dec. 4, 2012 to Beck 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 Beck, or any indication that a response was forthcoming, NGFA sent a notice to Beck on Jan. 22, 2013 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 certified mail return receipt confirmed that this mailing was delivered to Beck on Jan. 25, 2013.

On March 15, 2013, NGFA issued a default judgment against Beck.

Conserv then amended its original complaint to add allegations that “Beck fraudulently entered into the Corn Contracts for purposes of receiving money and/or other reasons,” and that “Beck, alone or with others, willfully and maliciously injured Conserv.”

On April 10, 2013, NGFA sent yet another notice to Beck with the amended complaint, providing that a signed arbitration

services contract should be returned within fifteen (15) days. The certified mail return receipt confirmed that this mailing was delivered to Beck on April 13, 2013.

By letter dated April 22, 2013, an attorney confirmed on Beck’s behalf by letter that Beck would not be participating in the arbitration process.

Default Judgment

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

Conserv 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.” Conserv properly executed and returned the arbitration services contract. Beck 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 Beck 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 Beck is proper and warranted.

Therefore, on June 26, 2013 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. Conserv FS Inc. is awarded judgment against Anthony Beck for \$1,528,174.
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: June 27, 2013

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary