



National Grain and Feed Association Arbitration Decision

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February 21, 2014

CASE NUMBER 2693

Plaintiff: Interstate Commodities Inc., Troy, N.Y.

Defendant: Joseph Calabrese, Southwick, Mass.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Interstate Commodities Inc. (Interstate), requested the entry of a default judgment in the amount of \$146,705.63 against the defendant, Joseph Calabrese (Calabrese). The default judgment is granted for the reasons set forth below.

Interstate submitted an arbitration complaint dated June 4, 2013, to the National Grain and Feed Association (NGFA). The complaint alleged that Calabrese failed to perform on contract nos. PO75949, PO75996 and PO75997 for yellow corn.

Each contract contained the following provision under the section entitled, "PURCHASE CONTRACT":

1. This Purchase is made under the trade rules of the National Grain & Feed Association governing transactions in grain and feed, except as modified herein, and both parties agree to be bound thereby. If a dispute arises that cannot be settled between the Parties to this contract, both Parties then agree to arbitrate under and be bound by the decision of the National Grain & Feed Association Arbitration procedure. This contract and said rules contain the entire agreement between the Parties.

Acting upon Interstate's complaint, NGFA prepared an arbitration services contract and submitted it to Interstate for execution. Upon receipt of the duly executed arbitration services contract from Interstate, NGFA submitted it to Calabrese on July 2, 2013. On Sept. 11, 2013, Calabrese returned a signed arbitration services contract. The arbitration services contract specifically signed by both parties, Interstate and Calabrese, provides that the parties agree to submit this dispute to arbitration by NGFA. Also under the arbitration services contract the parties "agree to comply with all NGFA Arbitration Rules" and "agree that noncompliance with any NGFA Arbitration Rules may result in a default judgment."

Interstate then submitted its First Argument on Sept. 24, 2013, in accordance with NGFA Arbitration Rule 7(b).

On Oct. 3, 2013, NGFA sent a letter along with a copy of Interstate's First Argument to Calabrese requesting its Answer due twenty (20) days from the date the letter was received. The certified mail return receipt confirmed that this mailing was delivered on Oct. 12, 2013. Therefore, Calabrese's Answer was due on Nov. 4, 2013.

After not receiving an Answer from Calabrese, or any indication that a filing was forthcoming, on Dec. 2, 2013, NGFA attempted to reach Calabrese by telephone and left a voicemail. After not hearing back from Calabrese, on Dec. 4, 2013, NGFA sent a letter to Calabrese by certified mail. This notice further specifically stated as follows:

Under the rules, NGFA has only limited authority to extend deadlines when an extension is requested before it expires. As we have attempted to discuss with you by telephone, we have not received a response from you and the deadline passed long ago. Please let us know within the next 10 business days if this is in error.

The certified mail return receipt confirmed that this mailing was delivered to Calabrese on Dec. 7, 2013.

NGFA has yet to receive an Answer from Calabrese, despite the repeated attempts by NGFA to contact Calabrese.

DEFAULT JUDGMENT

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

Interstate properly and in a timely manner filed its complaint under NGFA Arbitration Rules Section 5(a). Pursuant to Section 5(b), NGFA then submitted an arbitration services contract to the parties which was executed by both Interstate and Calabrese.

NGFA Arbitration Rule Section 7(i) provides for the following:

In addition to default judgments issued pursuant to Section 5(e), where a party has failed to file arbitration papers in accordance with the time limits specified in this Section or by the National Secretary, the delinquent party shall be deemed to be in default, except there is no obligation to file a rebuttal or surrebuttal.

Therefore, on Jan. 9, 2014, 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. Interstate Commodities, Inc. is awarded judgment against Joseph Calabrese for \$146,705.63.
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: January 9, 2014

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary