



National Grain and Feed Association Arbitration Decision

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November 27, 2013

CASE NUMBER 2695

Plaintiff: Archer-Daniels-Midland Company, Decatur, Ill.

Defendant: KDM Farms LLC, Bedford, Ind.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Archer-Daniels-Midland Company (ADM), requested the entry of a default judgment in the amount of \$37,300 against the defendant, KDM Farms LLC (KDM). The default judgment is granted for the reasons set forth below.

ADM submitted an arbitration complaint dated June 25, 2013 to the National Grain and Feed Association (NGFA). The complaint alleged that KDM failed to perform on duly signed ADM contract no. 0423928 for U.S. #1 yellow soybeans and contract no. 0423929 for U.S. #2 yellow corn.

Each contract's "Standard Terms and Conditions" stated:

22. 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 According To The Arbitration Rules Of The NGFA, And That The Decision And Award Determined There Under Will Be Final And Binding On Seller And Buyer.

[Emphasis in original.]

Acting upon ADM's complaint, NGFA prepared an arbitration services contract and submitted it to ADM for execution. By certified mail dated July 11, 2013, NGFA also sent to KDM a letter providing notice of these proceedings with copies of ADM's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. This mailing was rejected and returned to the NGFA.

Upon receipt of the duly executed arbitration services contract from ADM, NGFA then sent the July 11, 2013 letter, copies of ADM's complaint and attachments, the NGFA Trade Rules and Arbitration Rules and the arbitration services contract with accompanying correspondence to KDM on Aug. 2, 2013 by Federal Express delivery. Federal Express confirmed that this mailing was delivered to KDM on Aug. 6, 2013.

On Aug. 23, 2013, NGFA sent to KDM another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Aug. 27, 2013. NGFA's letters of Aug. 2, 2013 and Aug. 23, 2013 to KDM 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 KDM, or any indication that a response was forthcoming, NGFA sent a notice to KDM on Sept. 11, 2013 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 KDM on Sept. 13, 2013.

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

DEFAULT JUDGMENT

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

ADM 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." ADM properly executed and returned the arbitration services contract. KDM 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 KDM 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 KDM is proper and warranted.

Therefore, on Oct. 17, 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. Archer-Daniels-Midland Company is awarded judgment against KDM Farms LLC for \$37,300.
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 17, 2013

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary