



National Grain and Feed Association

Arbitration Decision

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ARBITRATION CASE NUMBER 2352

Plaintiff: Consolidated Grain and Barge Company, Fayette, Iowa

Defendant: Paul Regan, Mike Regan, and Maury Regan, d/b/a Regan Farms, and Maury Regan, Waukon, Iowa

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Consolidated Grain and Barge Company (CGB), requested the entry of a default judgment in the amount of \$752,525.00 against the defendants, Paul Regan, Mike Regan, and Maury Regan, d/b/a Regan Farms, and Maury Regan. The default judgment was granted for the reasons set forth below.

CGB submitted an arbitration complaint dated October 14, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that the defendants failed to perform on duly signed CGB contract nos. 255406, 257458, 258981, 265877, and 265879 for delivery of #2 yellow corn.

Each of the contracts contained the following provision:

Seller and Buyer agree that all disputes and controversies of any nature whatsoever between them with respect to this contract shall be arbitrated according to the Arbitration Rules of the National Grain and Feed Association, and that the decision and award determined thereunder shall be final and binding on Seller and Buyer.

Acting upon CGB's complaint, the NGFA prepared an arbitration services contract and submitted it to CGB for execution. By certified mail dated October 20, 2008, the NGFA also sent to the defendants a letter providing notice of these proceedings with copies of CGB's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to the defendants was signed for and received on November 6, 2008.

Upon receipt of the duly executed arbitration services contract from CGB, the NGFA then sent it with accompanying correspondence to the defendants by certified mail on October 30, 2008. The certified mail return receipt confirmed that this mailing to the defendants was signed for and received on November 5, 2008.

On December 2, 2008, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on December 4, 2008. The NGFA's letters of October 30 and December 2, 2008 to the defendants 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 an appropriate response from the defendants, the NGFA sent yet another notice to the defendants on January 9, 2009 by Federal Express delivery. This notice included a copy of CGB's request for a default judgment, and 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 the defendants on January 13, 2009.

On January 13, 2009, Maury Regan advised the NGFA by telephone that he did not dispute the amount owed to CGB. Mr. Regan was reminded that a default judgment would be entered unless the defendants complied with the arbitration process or the case was dismissed by consent of all the parties.

DEFAULT JUDGMENT

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

CGB 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." CGB properly executed and returned the arbitration services contract. The defendants 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 the defendants 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 Paul Regan, Mike Regan, and Maury Regan, d/b/a Regan Farms, and Maury Regan is proper and warranted.

Therefore, on March 9, 2009, the 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 judgment pursuant to Section 5(e).

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. Consolidated Grain and Barge Company is awarded judgment against Paul Regan, Mike Regan, and Maury Regan, d/b/a Regan Farms, and Maury Regan for \$752,525.00.
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: March 9, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary