



National Grain and Feed Association

Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922

Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

September 8, 2011

Arbitration Case Number 2536

Plaintiff: Grainco F.S. Inc., Mazon, Ill.

Defendant: Eric Good, Aurora, Ill.

Factual and Procedural Background

The plaintiff, Grainco F.S., Inc. (Grainco), requested the entry of a default judgment in the amount of \$31,353.87 against Eric Good (Good). The default judgment was granted for the reasons set forth below.

Grainco submitted an arbitration complaint dated Dec. 2, 2010 to the National Grain and Feed Association (NGFA). The complaint alleged that Good failed to perform on duly signed Grainco contract nos. FP3440 and FP3717 for delivery of yellow corn.

Each of the contracts contained the following provision under "PURCHASE CONTRACT TERMS":

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. [Emphasis in original.]

Acting upon Grainco's complaint, NGFA prepared an arbitration services contract and submitted it to Grainco for execution. By certified mail dated Dec. 21, 2010, NGFA also sent to Good a let-

ter providing notice of these proceedings with copies of Grainco's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing was signed for and received on Dec. 24, 2010.

Upon receipt of the duly executed arbitration services contract from Grainco, NGFA then sent it with accompanying correspondence to Good by certified mail on Jan. 7, 2011. This mailing was unclaimed.

On March 8, 2011, NGFA sent to Good another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on March 10, 2011. NGFA's letters of Jan. 7 and March 8, 2011 to Good 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 Good, or any indication that a response was forthcoming, NGFA sent yet another notice to Good on April 27, 2011 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 Good on April 29, 2011.

On May 11, 2011, Good contacted NGFA by telephone. He indicated that he intended to respond to NGFA after discussing the case with an attorney. Following this conversation, NGFA sent Good a copy of the arbitration services contract and Grainco's arbitration complaint by certified mail. The certified mail return receipt confirmed that this mailing was signed for and received on May 14, 2011.

On June 2, 2011, Good contacted NGFA again by telephone, requesting one week for his attorney to respond to NGFA. NGFA granted this request.

On June 3, 2011, NGFA received documentation from Grainco that Good had paid Grainco \$16,821.13, part of Grainco's total claim amount of \$48,175.00. Grainco indicated that Good had refused to pay the balance, and requested that a default judgment be entered for the remaining balance of \$31,353.87.

NGFA has yet to receive an executed arbitration services contract or further communication from Good, despite the repeated attempts by NGFA to communicate with him regarding this case.

Default Judgment

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

Grainco 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." Grainco properly executed and returned the arbitration services contract. Good refused to comply with the NGFA Arbitration Rules, and refused to properly 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 appeared that Good 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 Good was proper and warranted.

Therefore, on Aug. 9, 2011, 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. Grainco F.S. Inc. is awarded judgment against Eric Good for \$31,353.87.
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: August 9, 2011

NATIONAL GRAIN AND FEED ASSOCIATION

By: **Charles M. Delacruz**
National Secretary