



National Grain and Feed Association

Arbitration Decision

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May 2, 2013

Arbitration Case Number 2649

Plaintiff: ADM Grain Company, Decatur, Ill.

Defendant: Chadwick Farms LLC, Laingsburg, Mich.

Factual and Procedural Background

The plaintiff, ADM Grain Company (ADM), requested the entry of a default judgment in the amount of \$279,330.74 against the defendant, Chadwick Farms LLC (Chadwick). The default judgment is granted for the reasons set forth below.

On Aug. 30, 2012, the United States District Court for the Eastern District of Michigan issued an order staying litigation in this matter so that this case would proceed to arbitration.

ADM submitted an arbitration complaint dated Sept. 7, 2012 to the National Grain and Feed Association (NGFA). The complaint alleged that Chadwick failed to perform on twelve (12) ADM contract nos. 22979, 23009, 23466, 23488, 23831, 90129, 90171, 90434, 90435, 90436, 92652 and 92663 for corn.

Each of the contracts contained the following provision under "Standard Terms and Conditions":

(3) Except as otherwise expressly provided herein, this contract is subject to National Grain & Feed Association ("NGFA") trade rules in effect on the date hereof. If, for whatever reason, the NGFA trade and arbitration rules are determined to be unenforceable by a court of competent jurisdiction, this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and the parties agree that jurisdiction for any court proceedings arising out of or related to this Agreement shall be exclusively on the courts of Macon County, Illinois.

Acting upon ADM's complaint, NGFA prepared an arbitration

services contract and submitted it to ADM for execution. By certified mail dated Sept. 14, 2012, NGFA also sent to Chadwick a letter providing notice of these proceedings with copies of ADM's complaint and attachments, including the court order, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Chadwick was signed for and received on Sept. 17, 2012.

Upon receipt of the duly executed arbitration services contract from ADM, NGFA then sent the arbitration services contract with accompanying correspondence to Chadwick by certified mail on Oct. 2, 2012. The certified mail return receipt confirmed that this mailing to Chadwick was signed for and received on Oct. 9, 2012.

On Nov. 1, 2012, NGFA sent to Chadwick another letter by certified mail. The certified mail return receipt confirmed that this mailing was signed for and received on Nov. 5, 2012. NGFA's letters of Oct. 2, 2012 and Nov. 1, 2012 to Chadwick 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 Chadwick, or any indication that a response was forthcoming, NGFA sent yet another notice to Chadwick on Dec. 4, 2012 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 order issued by the court in August 2012 and the circumstances of this case, we anticipate that the defendant may be electing

not to participate in these proceedings, and we must anticipate that you do not intend to respond. *Please note that this is our last attempt to elicit a response from the defendant. A default judgment may be entered, which the Plaintiff may enforce in a court of law.* [Emphasis in original.]

The certified mail return receipt confirmed that this mailing was signed for and received by Chadwick on Dec. 6, 2012.

On Jan. 2, 2013, NGFA received a facsimile from Chadwick with a signed arbitration services contract. NGFA has yet to receive the arbitration service fee for this case, despite repeated attempts by NGFA to obtain Chadwick's compliance.

Default Judgment

The NGFA established jurisdiction over this matter pursuant to the district court's order and the express terms of the contracts.

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. Chadwick 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 Chadwick 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 Chadwick is proper and warranted.

Therefore, on May 2, 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. ADM Grain Company is awarded judgment against Chadwick Farms LLC for \$279,330.74.
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: May 2, 2013

NATIONAL GRAIN AND FEED ASSOCIATION

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