



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

August 22, 2013

Arbitration Case Number 2665

Plaintiff: Crystal Valley Cooperative, Lake Crystal, Minn.

Defendant: Michael J. Cemensky, Le Center, Minn.

Factual and Procedural Background

The plaintiff, Crystal Valley Cooperative (Crystal Valley), requested the entry of a default judgment in the amount of \$75,500 against the defendant, Michael J. Cemensky (Cemensky). The default judgment is granted for the reasons set forth below.

Crystal Valley submitted an arbitration complaint dated Jan. 22, 2013 to the National Grain and Feed Association (NGFA). The complaint alleged that Cemensky failed to perform on duly signed Crystal Valley contracts nos. 701572, 701589, 702057 and 702164 for delivery of U.S. no. 2 yellow corn.

Each of the contracts stated:

The terms and conditions on the reverse side of this contract are incorporated herein by this reference. Please review the reverse side of this contract prior to signing this contract.

Each contract also contained the following provision under "PURCHASE CONTRACT TERMS":

5. National Grain and Feed Association (NGFA) TRADE RULES TO APPLY: Except as otherwise provided herein, this contract shall be arbitrated pursuant to the Trade Rules of the NGFA, but, however, those rules shall not apply if their application allows the Seller to profit from the Seller's breach of contract. The Parties to this contract agree that the sole remedy related to this contract shall be through arbitration proceedings before the NGFA pursuant to the NGFA Arbitration Rules. The decision and award determined through such arbitrations 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 Crystal Valley's complaint, the NGFA prepared an arbitration services contract and submitted it to Crystal Valley for execution. By certified mail dated Feb. 8, 2013, the NGFA also sent to Cemensky a letter providing notice of these proceedings with copies of Crystal Valley's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Cemensky was signed for and received on Feb. 12, 2013.

Upon receipt of the duly executed arbitration services contract from Crystal Valley, the NGFA sent it with accompanying correspondence to Cemensky by certified mail on March 7, 2013. The certified mail return receipt confirmed that this mailing to Cemensky was signed for and received on March 18, 2013.

On April 5, 2013, NGFA sent to Cemensky another letter by certified mail. The certified mail return receipt confirmed that this mailing to Cemensky was signed for and received on April 19, 2013. NGFA's letters of March 7, 2013 and April 5, 2013 to Cemensky 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 not receiving any response from Cemensky, or any indication that a response was forthcoming, on May 16, 2013, the NGFA sent a letter 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 on 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.]

The certified mail return receipt confirmed that this mailing to Cemensky was signed for and received on May 24, 2013.

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

Default Judgment

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

National Secretary may without further submissions by the parties enter a default judgment or such other relief as the National Secretary deems appropriate.

Crystal Valley 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." Crystal Valley properly executed and returned the arbitration services contract. Cemensky refused to comply with the NGFA Arbitration Rules, and refused to respond to any arbitration-related mailings.

As it appears that Cemensky 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 Cemensky is proper and warranted.

NGFA Arbitration Rule Section 5(e) provides for the following:

Therefore, on June 18, 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).

Where a party fails to pay the arbitration service fee and/or fails to execute the contract for arbitration, the

The Award

THEREFORE, IT IS ORDERED THAT:

1. Crystal Valley Cooperative is awarded judgment against Michael J. Cemensky for \$75,500.
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: June 18, 2013

NATIONAL GRAIN AND FEED ASSOCIATION

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