



National Grain and Feed Association

Arbitration Decision

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September 20, 2013

Arbitration Case Number 2671

Plaintiff: Lansing Trade Group LLC, Overland Park, Kan.

Defendant: Tri County Farms LLC, Nampa, Idaho

Factual and Procedural Background

The plaintiff, Lansing Trade Group LLC (Lansing), requested the entry of a default judgment in the amount of \$83,662.39 against the defendant, Tri County Farms LLC (Tri County). The default judgment is granted for the reasons set forth below.

Lansing submitted an arbitration complaint dated Feb. 19, 2013 to the National Grain and Feed Association (NGFA). The complaint alleged that Tri County failed to perform on duly signed Lansing contract no. 63129 for U.S. #2 yellow corn.

The contract stated, "TRADERULES TO APPLY: NGFA." The "CONTRACT TERMS AND CONDITIONS" further provided:

2. This Contract is subject to the customary trade rules, as established and governed by the appropriate exchange, board, or association designated on the face hereof, of the market to which the product is shipped. This Contract is also subject to the Trade Rules of the National Grain and Feed Association ("NGFA"). A copy will be provided upon request. Further, any disputes or controversies arising out of this Contract shall be arbitrated by the NGFA pursuant to its Arbitration Rules. Buyer and Seller agree that judgment may be entered upon any arbitration award in any Court of competent jurisdiction. Performance of this Contract is subject to orders, rules, and regulations of all governmental agencies, and to all causes which are beyond the reasonable control of the parties thereof.

Acting upon Lansing's complaint, NGFA prepared an arbitration services contract and submitted it to Lansing for execution. By certified mail dated March 15, 2013, NGFA also sent to Tri County a letter providing notice of these proceedings with

copies of Lansing's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Tri County was signed for and received on March 28, 2013.

Upon receipt of the duly executed arbitration services contract from Lansing, NGFA then sent the arbitration services contract with accompanying correspondence to Tri County by certified mail on April 5, 2013. The certified mail return receipt confirmed that this mailing to Tri County was signed for and received on April 8, 2013.

On May 13, 2013, NGFA sent to Tri County another letter by certified mail. The certified mail return receipt confirmed that this mailing was delivered on May 16, 2013. NGFA's letters of April 5 and May 13, 2013 to Tri County 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 Tri County, or any indication that a response was forthcoming, NGFA sent a notice to Tri County on June 17, 2013 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 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 was delivered to Tri County on June 20, 2013.

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

Default Judgment

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

Lansing 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." Lansing properly executed and returned the arbitration services contract. Tri County 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 Tri County 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 Tri County is proper and warranted.

Therefore, on July 24, 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. Lansing Trade Group LLC is awarded judgment against Tri County Farms LLC for \$83,662.39.
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: July 24, 2013

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary