



National Grain and Feed Association Arbitration Decision

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October 17, 2013

CASE NUMBER 2690

Plaintiff: CHS, St. Paul, Minn.

Defendant: Darin Seifert, Dumont, Minn.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, CHS, requested the entry of a default judgment in the amount of \$107,484.71 against the defendant, Darin Seifert (Seifert). The default judgment is granted for the reasons set forth below.

CHS submitted an arbitration complaint dated April 19, 2013 to the National Grain and Feed Association (NGFA). The complaint alleged that Seifert failed to perform on duly signed CHS contract nos. HA701 and HA769 for corn and HA702 and HA742 for soybeans.

Each contract stated, "THIS CONTRACT INCLUDES THE TERMS AND CONDITIONS PRINTED ON THE REVERSE SIDE HEREOF, WHICH ARE HEREBY AGREED TO." Each contract stated under its "ADDITIONAL TERMS OF CONTRACT - CHS BUYER" as follows.

1. This contract is subject to the rules and regulations of the National Grain and Feed Association. All disputes and controversies between Buyer and Seller under this contract or arising from or relating to this contract and/or the transactions referenced in this contract shall, if elected by Buyer in its sole discretion, be settled by binding arbitration with the National Grain and Feed Association if applicable, and if not applicable shall, if elected by Buyer in its sole discretion, be resolved by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Buyer reserves all of its other rights and remedies at law or in equity.

Acting upon CHS' complaint, NGFA prepared an arbitration services contract and submitted it to CHS for execution. By certified mail dated April 25, 2013, NGFA also sent to Seifert a letter providing notice of these proceedings with copies of CHS' complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Seifert was signed for and received on April 30, 2013.

Upon receipt of the duly executed arbitration services contract from CHS, NGFA then sent it with accompanying correspondence to Seifert by certified mail on May 31, 2013. The certified mail return receipt confirmed that this mailing to Seifert was signed for and received on June 5, 2013.

On June 25, 2013, NGFA sent to Seifert another letter by certified mail. The certified mail return receipt confirmed that this mailing was signed for and received on July 3, 2013. NGFA's letters of May 31 and June 25, 2013 to Seifert 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 Seifert, or any indication that a response was forthcoming, NGFA sent a notice to Seifert on July 22, 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.]

This last attempt by certified mail was rejected then delivered successfully by Federal Express Delivery. Federal Express confirmed that this mailing was delivered on Aug. 8, 2013.

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

DEFAULT JUDGMENT

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

CHS 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." CHS properly executed and returned the arbitration services contract. Seifert 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.

Therefore, on Sept. 9, 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. CHS is awarded judgment against Darin Seifert for \$107,484.71.
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: September 9, 2013

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary