



National Grain and Feed Association Arbitration Decision

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September 30, 2022

CASE NUMBER 2953

PLAINTIFF: CARGILL, INCORPORATED, WEST FARGO, ND

DEFENDANT: MICHAEL A. ANDERSON, REGENT, ND

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Cargill, Incorporated (Cargill), requested the entry of a default judgment in the amount of \$134,166.12 against the defendant, Michael A. Anderson (Anderson). The default judgment is granted for the reasons set forth below.

Cargill submitted an arbitration complaint dated November 29, 2021, to the National Grain and Feed Association (NGFA). The complaint alleged that Johnson failed to perform on contract WFAG-OS-54280 for sunflower seed.

The contract was duly executed by both parties and stated “Rules to Govern: NGFA.” The contract also stated under paragraph 1 of the “Purchase Terms” as follows:

1. RULES: The Rules of the Association listed on the face of this Contract shall govern. All disputes arising out of this transaction, including any issues relating to contract formation, shall be resolved by arbitration in accordance with the rules of such Association. The decision and award determined by such arbitration shall be final and binding upon both parties. ...

Acting upon Cargill’s complaint, NGFA prepared an arbitration services contract and submitted it to Cargill for execution. By Federal Express dated December 15, 2021, NGFA also sent to Anderson a letter providing notice of these proceedings with copies of Cargill’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. Federal Express confirmed that this mailing to Anderson was delivered on December 20, 2021.

Upon receipt of the duly executed arbitration services contract from Cargill, NGFA then sent it with accompanying correspondence to Anderson by Federal Express on January 6, 2022. Federal Express confirmed that this mailing to Anderson was delivered on January 10, 2022.

On February 16, 2022, NGFA sent to Anderson another letter by Federal Express. Federal Express confirmed this mailing was delivered on February 21, 2022. NGFA’s letters of January 6 and February 21, 2022, to Anderson specifically provided notice that Rule 2(E) of the NGFA Arbitration Rules required that the signed contract be returned within fifteen (15) days.

After still not receiving any response from Anderson or any indication that a response was forthcoming, NGFA sent yet another notice to Anderson on June 23, 2022, by Federal Express. This notice further specifically stated as follows:

NGFA Arbitration Rules 2(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 Anderson on June 27, 2022.

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

DEFAULT JUDGMENT

NGFA established jurisdiction over this matter pursuant to the express terms of the contract and by way of Cargill's status as an NGFA active member.

Cargill properly and in a timely manner filed its complaint under NGFA Arbitration Rule 2(A). Pursuant to Rule 2(B), NGFA then submitted an arbitration services contract to the parties. Rule 2(D) states that, "Each party must return the completed arbitration services contract within 15 days from the date the party receives it from the NGFA Secretary." Cargill properly executed and returned the arbitration services contract. Anderson refused to comply with the NGFA Arbitration Rules and refused to respond to any requests from NGFA for the executed contract.

NGFA Arbitration Rule 2(E) provides for the following:

Where a party fails to execute the arbitration services contract or pay the arbitration services fee, the NGFA Secretary may without further submissions by the parties enter a default judgment or such other relief as the NGFA Secretary deems appropriate.

As it appears that Anderson made a conscious decision to disregard these arbitration proceedings, pursuant to Rule 2(E) of the NGFA Arbitration Rules, the NGFA Secretary finds that entry of default judgment against Anderson is proper and warranted.

NGFA Arbitration Rule 2(E) also sets forth the requirements and conditions under which, "[a]ny party against whom a default judgment has been entered may apply to vacate the default judgment within 15 days of entry of the default judgment."

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. Cargill, Incorporated is awarded judgment against Michal A. Anderson for \$134,166.12.

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 19, 2022*

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

* On August 19, 2022, NGFA entered the default judgment against the defendant. The defendant was advised regarding the procedures for applying to vacate the default judgment, but the defendant did not apply to vacate the default judgment.