



National Grain and Feed Association Arbitration Decision

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June 30, 2023

CASE NUMBER 3035

PLAINTIFF: FBN CM, LLC, SAN CARLOS, CA

DEFENDANT: REX McCLAIN, ARAPAHOE, NE

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, FBN CM, LLC (FBN), requested the entry of a default judgment in the amount of \$64,381.25 against the defendant, Rex McClain (McClain). The default judgment is granted for the reasons set forth below.

FBN submitted an arbitration complaint dated June 24, 2022, to the National Grain and Feed Association (NGFA). The complaint alleged that McClain failed to perform on multiple contracts for #2 yellow corn.

The contracts were duly executed by the parties and stated under the terms and conditions as follows:

NGFA Trade and Arbitration Rules: Unless otherwise provided herein, this contract is subject to the Trade Rules of the National Grain and Feed Association (“NGFA”) current on the date of the contract, which rules are incorporated herein by reference. All disputes relating to contract creation, performance and liability will be arbitrated according to the Arbitration Rules of the NGFA. The decision and award of the NGFA arbitrators will be final and binding on both parties. Judgment upon an NGFA arbitration award may be entered and enforced in any court of competent jurisdiction. Copies of the NGFA Trade and Arbitration Rules are available upon request or from www.ngfa.org.

Acting upon FBN’s complaint, NGFA prepared an arbitration services contract and submitted it to FBN for execution. By Federal Express dated July 22, 2022, NGFA also sent to McClain a letter providing notice of these proceedings with copies of FBN’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. Federal Express confirmed that this mailing to McClain was delivered on July 26, 2022.

Upon receipt of the duly executed arbitration services contract from FBN, NGFA then sent it with accompanying correspondence to McClain by Federal Express on August 22, 2022. Federal Express confirmed that this mailing to McClain was delivered on August 25, 2022.

On October 7, 2022, NGFA sent to McClain another letter by Federal Express. Federal Express confirmed this mailing was delivered on October 10, 2022. NGFA’s letters of August 22 and October 7, 2022, to McClain 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 McClain or any indication that a response was forthcoming, NGFA sent yet another notice to McClain on November 25, 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 McClain on November 28, 2022.

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

DEFAULT JUDGMENT

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

FBN 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." FBN properly executed and returned the arbitration services contract. McClain 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 McClain 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 McClain 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. FBN CM, LLC is awarded judgment against Rex McClain for \$64,381.25
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: March 14, 2023*

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

* On March 14, 2023, 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.