



National Grain and Feed Association Arbitration Decision

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June 30, 2023

CASE NUMBER 3062

PLAINTIFF: INDIGO AG, INC. THROUGH ITS WHOLLY-OWNED SUBSIDIARY INDIGO MARKETPLACE, LLC, MEMPHIS, TN

DEFENDANT: HOLMES FARMS, A PARTNERSHIP, AND COREY HOLMES, ITS GENERAL PARTNER, NEW HOLLAND, IL

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Indigo Ag, Inc. through its wholly-owned subsidiary Indigo Marketplace, LLC (Indigo), requested the entry of a default judgment in the amount of \$251,300.00 against the defendant, Holmes Farms, a partnership, and Corey Holmes, its general partner (collectively, Holmes). The default judgment is granted for the reasons set forth below.

Indigo submitted an arbitration complaint dated August 25, 2022, to the National Grain and Feed Association (NGFA). The complaint alleged that Holmes failed to perform on contract ILMPP0273-2 for corn, governed by a Marketplace Seller Agreement (MSA) between the parties.

The MSA and the contract were duly executed by the parties. The MSA stated under paragraph 7 as follows:

Dispute Resolution. Except as otherwise provided herein, the MSA and any addendum or transactions under the MSA, the Marketplace Platform or through Indigo Marketplace will be subject to NGFA trade rules (the “*Rules*”) in effect on the date hereof, and any dispute will be referred to NGFA arbitration in accordance with the Rules. THE PARTIES AGREE THAT THE SOLE FORUM FOR RESOLUTION OF ALL DISAGREEMENTS OR DISPUTES BETWEEN YOU AND INDIGO RELATING TO CROP TRANSACTIONS OF ANY SORT ARISING UNDER THIS MSA, THE INDIGO MARKETPLACE OR THE MARKETPLACE PLATFORM SHALL BE ARBITRATION PROCEEDINGS BEFORE THE NGFA PURSUANT TO THE RULES. The decision and award determined by such arbitration shall be final and binding upon the parties and judgment upon the award may be entered in any court having jurisdiction thereof.

...

Acting upon Indigo’s complaint, NGFA prepared an arbitration services contract and submitted it to Indigo for execution. By Federal Express dated September 2, 2022, NGFA also sent to Holmes a letter providing notice of these proceedings with copies of Indigo’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. Federal Express confirmed that this mailing to Holmes was delivered on September 6, 2022.

Upon receipt of the duly executed arbitration services contract from Indigo, NGFA then sent it with accompanying correspondence to Holmes by Federal Express on September 23, 2022. Federal Express confirmed that this mailing to Holmes was delivered on September 28, 2022.

On October 28, 2022, NGFA sent to Holmes another letter by Federal Express. Federal Express confirmed this mailing was delivered on November 1, 2022. NGFA's letters of September 23 and October 28, 2022, to Holmes 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 Holmes or any indication that a response was forthcoming, NGFA sent yet another notice to Holmes 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 Holmes on November 30, 2022.

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

DEFAULT JUDGMENT

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

Indigo 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." Indigo properly executed and returned the arbitration services contract. Holmes 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 Holmes 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 Holmes is proper and warranted.

Arbitration Rule 2(E) also sets forth the requirements and conditions under which, "a 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.” Further, NGFA Arbitration Rule 7 provides that a default judgment issued by the NGFA Secretary shall be final unless properly and timely appealed by either party.

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. Indigo Ag, Inc. through its wholly-owned subsidiary, Indigo Marketplace, LLC is awarded judgment against Holmes Farms, a partnership, and Corey Holmes, its general partner for \$251,300.00
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 11, 2023*

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

* On March 11, 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.