



National Grain and Feed Association Arbitration Decision

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January 24, 2024

CASE NUMBER 3088

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

DEFENDANT: KYLE C. KESSLER, CRAWFORDSVILLE, IN

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Indigo Ag, Inc., through its wholly-owned subsidiary, Indigo Marketplace, LLC, requested the entry of a default judgment in the amount of \$95,034 against the defendant, Kyle C. Kessler. The default judgment is granted for the reasons set forth below.

The plaintiff submitted an arbitration complaint dated November 10, 2022, to the National Grain and Feed Association (NGFA). The complaint alleged that the defendant failed to perform on contract INMPP000189 for corn.

The contract was duly executed by the parties and stated under the terms and conditions as follows:

Dispute Resolution. Dispute Resolution. Except as otherwise provided herein, the Agreement and any addendum, or transactions under the Agreement, the Indigo Marketplace Platform or through Indigo Marketplace will be subject to National Grain & Feed Association (“NGFA”) trade rules (the “Rules”) in effect on the date thereof, 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 relating to crop transactions arising under the Agreement, the Indigo Marketplace or the Indigo Marketplace Platform between You and Indigo 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 judgement upon the award may be entered in any court having jurisdiction thereof. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

Acting upon the plaintiff’s complaint, NGFA prepared an arbitration services contract and submitted it to the plaintiff for execution. By Federal Express dated December 15, 2022, NGFA also sent to the defendant a letter providing notice of these proceedings with copies of the plaintiff’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. Federal Express confirmed that this mailing to the defendant was delivered on December 17, 2022.

Upon receipt of the duly executed arbitration services contract from the plaintiff, NGFA then sent it with accompanying correspondence to the defendant by Federal Express on January 11, 2023. Federal Express confirmed that this mailing to the defendant was delivered on January 19, 2023.

On February 24, 2023, NGFA sent to the defendant another letter by Federal Express. Federal Express confirmed this mailing was delivered on February 27, 2023. NGFA's letters of January 11 and February 24, 2023, to the defendant provided notice that Rule 2(E) of the NGFA Arbitration Rules required that the signed arbitration services contract be returned within fifteen (15) days.

NGFA sent another notice to the defendant on May 19, 2023, by Federal Express. This notice 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 the defendant on May 22, 2023. On June 6, 2023, the defendant reached out to NGFA via telephone inquiring about the arbitration process. NGFA returned the phone call and left a voice message.

NGFA has not received an executed arbitration services contract, or any further communication from the defendant.

DEFAULT JUDGMENT

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

The plaintiff filed its complaint in conformity with 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." The plaintiff executed and returned the arbitration services contract. The defendant elected to not comply with the NGFA Arbitration Rules.

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.

Pursuant to Rule 2(E), NGFA finds that entry of default judgment against the defendant is 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." Further, NGFA Arbitration Rule 7 provides that a default judgment issued by NGFA may be appealed under the rules by either party.

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. The plaintiff awarded judgment against the defendant for \$95,034.00.
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: October 27, 2023*

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

* On October 27, 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.