



National Grain and Feed Association

Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

May 10, 2007

Arbitration Case Number 2156

Plaintiff: Lansing Trade Group, LLC d/b/a Lansing Grain Co., f/k/a Lansing Grain Co., LLC, Auburn, N.Y.

Defendant: Devine Farms LLC, Canastota, N.Y.

Factual and Procedural Background

The plaintiff, Lansing Trade Group, LLC d/b/a Lansing Grain Company, f/k/a Lansing Grain Company, LLC (Lansing), requested the entry of a default judgment in the amount of \$176,934.75, plus interest, against the defendant, Devine Farms LLC (Devine).

The default judgment was granted for the reasons set forth below.

Lansing claimed that pursuant to numerous contracts between the parties, Devine accepted deliveries of feed ingredients from Lansing between Sept. 2, 2005 and March 17, 2006, but that Devine failed to pay outstanding balances for feed ingredients delivered, and that, as a result, Devine owed \$176,934.75 to Lansing.

On Oct. 25, 2006, Hon. Dennis K. McDermott of the Supreme Court, State of New York, County of Madison, ordered Devine to submit this matter to arbitration before the National Grain and Feed Association (NGFA). Specifically, the court's order stated as follows:

“ORDERED, that Defendant shall file the required application/complaint to submit this matter to arbitration pursuant to the Arbitration Rules of the National Grain and Feed Association and pay the required arbitration service fee pursuant to said Rules within twenty (20) days of execution of this Order ...”

To date, the NGFA has never received a submission from Devine in compliance with the court's order, or any other communication from Devine. Lansing filed an arbitration complaint with the NGFA on Nov. 17, 2006.

Acting upon Lansing's complaint, the NGFA prepared a contract for arbitration and submitted it to Lansing for execution. By certified mail dated Dec. 11, 2006, the NGFA also sent to Devine a letter providing notice of these proceedings with copies of Lansing's complaint and attachments, as well as the NGFA Trade Rules and

Arbitration Rules. The certified mail return receipt confirmed that this mailing was signed for and received by Devine on Dec. 14, 2006. Upon receipt of the duly executed contract for arbitration from Lansing, the NGFA then sent it with accompanying correspondence by certified mail to Devine on Dec. 21, 2006. Devine refused to accept this mailing despite multiple attempts at delivery.

On Jan. 17, 2007, the NGFA sent the arbitration services contract with another letter to Devine by Federal Express second-day delivery. Federal Express confirmed that this mailing was delivered to Devine on Jan. 19, 2007. Both NGFA's letters of Dec. 21, 2006 and Jan. 17, 2007 to Devine specifically stated that Sections 5(c) and (d) of the Arbitration Rules require that the signed contract be returned within 15 days.

On Feb. 6, 2007, the NGFA sent another notice to Devine by Federal Express priority overnight delivery and U.S. first class mail reminding Devine that a response was overdue. 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].

Federal Express confirmed that this mailing was delivered to Devine on Feb. 7, 2007.

The NGFA has yet to receive an executed arbitration contract or any other response from Devine, despite the Oct. 25, 2006 court order and repeated attempts by NGFA to contact Devine.

Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of Judge McDermott's Oct. 25, 2006 order and by way of Lansing's status as a NGFA active member.

Lansing 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 a contract for arbitration 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.*" Lansing properly executed and returned the contract for arbitration. Devine refused to comply with Judge McDermott's order or the NGFA Arbitration Rules, and Devine refused to respond to any arbitration-related mailings.

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."

As it appears that Devine made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary finds that entry of default judgment against Devine is proper and warranted.

NGFA Arbitration Rule Section 5(e) also 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.*"

The Award

Therefore, it is ordered that:

1. Lansing Trade Group, LLC d/b/a Lansing Grain Co., f/k/a Lansing Grain Co., LLC is awarded judgment against Devine Farms LLC for \$176,934.75.
2. Compound interest on the judgment shall accrue at the statutory rate available for judgments in the applicable jurisdiction from this date until paid in full.

Dated: March 2, 2007

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary