



National Grain and Feed Association

Arbitration Decision

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May 8, 2008

Arbitration Case Number 2179

Plaintiff: Archer-Daniels-Midland Company
d/b/a ADM Grain Company, Overland Park, Kan.

Defendant: Heartland Commodities, LLC, Joplin, Mo.

Factual and Procedural Background

The plaintiff, Archer-Daniels-Midland Company d/b/a ADM Grain Company (ADM), requested the entry of a default judgment in the amount of \$161,375.00 against the defendant, Heartland Commodities, LLC (Heartland). The default judgment is granted for the reasons set forth below.

ADM submitted an arbitration complaint dated August 15, 2007 to the National Grain and Feed Association (NGFA). The complaint alleged failure to perform on ADM contracts #715703 and #715704 for hard red winter wheat. By certified mail dated August 17, 2007, the NGFA then sent to Heartland a letter providing notice of these proceedings with copies of ADM's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules.

The NGFA also submitted an arbitration services contract to the parties for execution. The arbitration services contract contains the following provisions:

"For the purpose of avoiding the delay and expense of litigation, the undersigned parties hereby agree to submit the following controversy to arbitration by the National Grain and Feed Association (NGFA) for resolution.

The parties agree to comply with all NGFA Arbitration Rules, including, but not limited to, those rules requiring the parties to advance approximate expenses when an

oral hearing is requested. The parties agree that non-compliance with any NGFA Arbitration Rules may result in a default judgment.

The parties further agree to abide by the decision reached in this case and that the decision shall be final, subject to the NGFA Arbitration Rules relating to appeals. (Emphasis added)."

Upon receipt of the duly executed arbitration services contract from ADM, the NGFA submitted it to Heartland by certified mail on September 4, 2007. Over the next several months, the NGFA made repeated communications with Heartland and its representatives. On December 12, 2007, the NGFA received the executed arbitration services contract from Heartland.¹

Under the NGFA Arbitration Rules, upon the execution of the arbitration services contract by all the parties, the NGFA National Secretary then provides notice to the plaintiff to file a "first argument" within twenty (20) days. The NGFA then forwards the plaintiff's argument to the defendant, which then has twenty (20) days to file an "answer." The plaintiff then has the option to file a "rebuttal" and the defendant has the option to file a "surrebuttal," but under the rules there is no obligation to file a rebuttal or surrebuttal.

In the administration of this case, in accordance with the NGFA's Arbitration Rules, the executed contract was sent to

¹ The NGFA was first referred to Heartland's principal, then to Heartland's registered agent for service, and then to attorney Michael Bigheart, who advised by letter that Butch Gifford, Heartland's principal, had instructed that attorney Mitchell Cross handle this matter on Heartland's behalf. After two additional follow up correspondences to Mr. Cross, the NGFA received the executed arbitration services contract from Heartland on December 12, 2007. The contract was signed by Butch Gifford on Heartland's behalf and witnessed on December 10, 2007.

ADM on December 13, 2007 along with the request for ADM's first argument. Upon receipt of ADM's timely filed first argument, the NGFA sent it to Heartland by certified mail on January 4, 2008, along with the request for Heartland's answer. The request to Heartland specifically reminded it of the obligations in the filing of an answer, stating as follows:

"In accordance with Section 7(d) of the NGFA Arbitration Rules, the defendant shall have twenty (20) days from the date of receipt of the plaintiff's first argument in which to file an answer."

The certified mail return receipt confirmed that this mailing was delivered to Heartland on January 8, 2008. Heartland's answer was therefore due on January 28, 2008.

After not receiving communication of any kind from Heart-

land, on February 15, 2008, the NGFA attempted to contact Heartland's attorney by telephone to inquire about Heartland's status in this case. On February 20, 2008, the NGFA eventually succeeded in speaking with Heartland's attorney by telephone to confirm that no filing of an answer had been attempted. After not hearing further from Heartland or its attorney in any form, on March 6, 2008, the NGFA sent notice to Heartland, which specifically stated:

"To date, we have not received any communication from you regarding this delinquent filing. As provided under NGFA Arbitration Rule 7(i), a default judgement may consequently be entered against Heartland Commodities LLC."

The NGFA has yet to receive any further response from Heartland of any kind.

Default Judgment

The NGFA has jurisdiction over this matter pursuant to the Arbitration Services Contract executed by both parties.

ADM properly and in a timely manner filed its first argument under NGFA Arbitration Rule Section 7(b). Pursuant to Section 7(c), the NGFA then submitted the first argument to the defendant. Section 7(d) states that, "the defendant shall have twenty (20) days to forward its answer from the date it receives the plaintiff's pleadings and evidence from the National Secretary and to submit a cross complaint or counterclaim." Heartland never responded further in connection with these proceedings.

NGFA Arbitration Rule Section 7(i) provides for the following:

In addition to default judgments issued pursuant to Section 5(d), where a party has failed to file arbitration papers in accordance with the time limits specified in this Section or by the National Secretary, the delinquent party shall be deemed to be in default, except there is no obligation to file a rebuttal or surrebuttal.

As it appeared that Heartland made a conscious decision to disregard these proceedings, pursuant to Section 7(i) of the NGFA Arbitration Rules and to the provisions in the arbitration services contract agreed to by the parties, the National Secretary found that entry of default judgment against Heartland was proper and warranted.

The Award

Therefore, it was ordered that:

1. Archer-Daniels-Midland Company d/b/a ADM Grain Company was awarded judgment against Heartland Commodities, LCC for \$161,375.00.
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.

Dated: March 21, 2008

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary