



National Grain and Feed Association Arbitration Decision

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August 19, 2004

Arbitration Case Number 2087

Plaintiff: Cooperative Marketing Alliance d/b/a CoMark, Memphis, Tenn.

Defendant: Daniel Friedenbach, Bloomfield, Neb.

Factual and Procedural Background

The plaintiff, Cooperative Marketing Alliance d/b/a CoMark (CoMark), requested the entry of a default judgment in the amount of \$6,090.74 against the defendant, Daniel Friedenbach (Friedenbach). The default judgment is granted for the reasons set forth below.

CoMark filed its arbitration complaint with the National Grain and Feed Association (NGFA) on Feb. 11, 2004. CoMark's complaint alleged that Friedenbach failed to deliver grain pursuant to various executed marketing agreements, resulting in total damages of \$6,090.74 due to CoMark. CoMark submitted a copy of the marketing agreements between the parties with its complaint.

CoMark is a NGFA active member in good standing and was so at the time the contract was executed. The contract expressly provided for settlement of any disputes through arbitration before the NGFA. Specifically, under paragraph (m) "Arbitration," the contract stated as follows:

"The parties to this contract agree that the sole remedy for resolution of any and all disagreements or disputes arising under or related to this contract shall be through arbitration proceedings before the National Grain and Feed Association (NGFA) pursuant to the NGFA Arbitration Rules. The decision and award determined through such arbitration award may be entered and enforced in any court having jurisdiction thereof."

Acting upon CoMark's complaint, the NGFA prepared an arbitration services contract and submitted it to CoMark for execution. By certified mail dated Feb. 19, 2004, the NGFA also sent Friedenbach a letter providing initial notice of these

proceedings and copies of CoMark's complaint, as well as the NGFA Trade Rules and Arbitration Rules. This mailing was delivered on Feb. 23, 2004. Upon receipt of the duly executed arbitration services contract from CoMark, the NGFA then sent it by certified mail to Friedenbach with a letter dated March 3, 2004, which referenced the NGFA Arbitration Rules that provide that the parties execute and return arbitration service contracts within 15 days. This mailing was delivered on March 6, 2004.

On March 25, 2004, the NGFA received a contract signed by Friedenbach, but the required arbitration fee was not included. On March 29, 2004, the NGFA sent a notice by first-class mail to Friedenbach requesting the arbitration fee and that he contact the NGFA with any questions or comments. On May 12, 2004, the NGFA sent by first-class mail another notice requesting the arbitration fee. On May 28, 2004, the NGFA sent yet an additional notice by Federal Express to Friedenbach. This notice again referenced the NGFA's Arbitration Rules, which provide for the entry of a default judgment upon failure to pay the service fee within 15 days. The notice specifically stated that based upon the lack of further response from Friedenbach, "[w]e must consequently 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.] This mailing was delivered and signed for on June 2, 2004.

The NGFA has yet to receive further response from Friedenbach, despite repeated attempts to solicit a response from him.

Default Judgment

The NGFA has jurisdiction over this matter pursuant to the express terms of the contract between the parties and the NGFA Arbitration Rules. Specifically, Section 3(a)(2) of the NGFA's Arbitration Rules states as follows:

"If the contract in dispute between a member and a nonmember provides for arbitration by the National Association or under its Arbitration Rules, the parties to the contract shall be deemed to have consented to arbitration under these Arbitration Rules."

The contract between CoMark and Friedenbach specifically invoked NGFA Arbitration in its terms and conditions. Because of CoMark's status as a NGFA active member and the language in the contract, the parties were bound to arbitrate this matter.

CoMark properly filed its complaint in compliance with NGFA Arbitration Rules Section 5(a). Pursuant to Section 5(b), the NGFA then submitted an arbitration services contract 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."* CoMark properly executed and returned the contract for arbitration. Friedenbach refused to

comply with arbitration-related mailings, including materials delivered by certified and express mail.

NGFA Arbitration Rule Section 5(e) provides 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."

Notice to Friedenbach of the arbitration complaint filed against him and the arbitration services contract were tendered on several occasions. Thus, it appeared Friedenbach made a conscious decision to disregard these arbitration proceedings. Therefore, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary finds that entry of default judgment against Friedenbach is proper and warranted.

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. CoMark Inc. is awarded judgment against Daniel Friedenbach in the amount of \$6,090.74.

Dated: July 12, 2004

National Grain and Feed Association

By: **Charles M. Delacruz**
National Secretary