



National Grain and Feed Association

Arbitration Decision

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November 23, 2004

Arbitration Case Number 2103

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: Sowell Farms Inc., Hickman, Ky.

Factual and Procedural Background

The plaintiff, Cargill Inc. (Cargill), requested the entry of a default judgment in the amount of \$86,567.80, plus interest, against the defendant, Sowell Farms Inc. (Sowell).

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

Cargill filed its arbitration complaint with the National Grain and Feed Association (NGFA) on July 20, 2004. Cargill's complaint alleged that Sowell breached Cargill contract numbers 33134 and 33144 involving corn; 32538 and 31112 involving soybeans; and 33135 involving soft red winter wheat. In its complaint, Cargill claimed total damages of \$86,567.80, plus interest. Cargill submitted copies of the contracts between the parties with its complaint.

Cargill is a NGFA active member in good standing and was so at the time the contracts were executed. The contracts expressly provided for settlement of any disputes through NGFA arbitration. Specifically, the contracts indicated "**Rules to Govern:** NGFA" on the front page, and under "PURCHASE TERMS," stated as follows:

"1. The parties agree that the sole remedy for resolution of all disagreements or disputes between the parties arising under this Contract shall be arbitration proceedings under the trade association identified on the front side hereof. If no trade association is identified, then NGFA Arbitration Rules then in effect shall apply, and judgment upon the award may be entered in any court having jurisdiction thereof. The decision and award determined by such arbitration shall be final and binding upon both parties."

Acting upon Cargill's complaint, the NGFA prepared an arbitration services contract and submitted it to Cargill for

execution. By certified mail dated July 30, 2004, the NGFA also sent Sowell a letter providing initial notice of these proceedings and copies of Cargill's complaint, as well as the NGFA Trade Rules and Arbitration Rules. This mailing was returned to the NGFA as "unclaimed." Upon receipt of the duly executed arbitration services contract from Cargill, the NGFA sent it by certified mail to Sowell, with a letter dated Aug. 10, 2004, which referenced the NGFA Arbitration Rules that provide that the parties execute and return arbitration service contracts within 15 days. This mailing was also returned to the NGFA as "unclaimed."

On Sept. 7, 2004, the NGFA sent a notice by Express Mail to Sowell as a reminder that a response was overdue and requesting that the NGFA be contacted with any questions or comments. This mailing included copies of the prior notices, the contract for arbitration and other documents. This mailing was delivered and signed for on Sept. 8, 2004. On Oct. 7, 2004, the NGFA sent by Express Mail yet another notice. This mailing again included copies of the prior notices, the contract for arbitration and other documents. This notice also again referenced the NGFA's Arbitration Rules, which provide for the entry of a default judgment upon failure to execute an arbitration contract within 15 days. The notice specifically stated that, "[b]ased 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.] This mailing was delivered and signed for on Oct. 11, 2004.

The NGFA has yet to receive an executed arbitration contract or any other response from Sowell, despite repeated attempts to contact Sowell from July 2004 through the present date.

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. 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."

Because of Cargill's status as a NGFA active member and the language in the contract, the parties were bound to arbitrate this matter.

Cargill properly filed its complaint in compliance with NGFA Arbitration Rule 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."* Cargill properly executed and returned the contract for arbitration. Sowell refused to comply with any arbitration-related mailings, including materials delivered by certified and expedited mail.

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."

Notifications to Sowell of the arbitration complaint filed against it, as well as the arbitration services contract, were tendered on several occasions. Thus, it appears Sowell made a conscious decision to disregard these arbitration proceedings. Therefore, pursuant to Section 5(e) of the NGFA Arbitration Rules, the NGFA corporate secretary determined that entry of default judgment against Sowell was 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. Cargill Inc. is awarded judgment against Sowell Farms Inc. for \$86,567.80.
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: October 25, 2004

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary