



National Grain and Feed Association

Arbitration Decision

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June 23, 2005

Arbitration Case Number 2107

Plaintiffs: Maurice Mitchell, Marvin Mitchell and Mitchell Farms Clearing Account, West Des Moines, Iowa

Defendant: Cargill Inc., Minneapolis, Minn.

Factual and Procedural Background

The plaintiffs, Maurice Mitchell, Marvin Mitchell and Mitchell Farms Clearing Account (collectively, "Mitchell"), on Aug. 25, 2004 filed a complaint against the defendant, Cargill Inc. (Cargill) with the National Grain and Feed Association (NGFA). The arbitration complaint arose out of written contracts dated Oct. 6, 2003 for the sale of corn by Mitchell to Cargill (contract nos. 404677, 44889 and 44890).

Cargill was a NGFA member at the time, which is a threshold jurisdictional requirement under NGFA Arbitration Rules [NGFA Arbitration Rules Section 3(a)(1)-(2)]. NGFA only may properly consider a case for arbitration in which at least one of the parties is a NGFA member.

Acting upon the complaint, and in accordance with the Arbitration Rules, the NGFA prepared an arbitration services contract and submitted it to Mitchell's representative for execution along with a letter advising that Sections 5(c) and (d) of the Arbitration Rules require that the arbitration service fee and the signed contract be returned within 15 days. This contract and letter were sent by facsimile and first-class mail on Sept. 21, 2004. After not receiving any response from Mitchell for 45 days, the NGFA sent another letter to Mitchell's counsel by facsimile and first-class mail on Nov. 5, 2004, inquiring about the contract and Mitchell's intentions regarding this claim.

On Dec. 13, 2004, the NGFA sent yet another notice by both facsimile and first-class mail to Mitchell. The Dec. 13 letter specifically stated as follows:

"To date, we have not received the executed contract, fee payment, or any other indication that you wish to proceed with this claim. Because the Arbitration Rules do not permit continued delay, we would appreciate your response within the next two weeks if you intend to proceed with this claim. Otherwise, we shall close this file."

The NGFA proceeded to close this file. Cargill subsequently requested a formal dismissal of Mitchell's complaint.

Dismissal

Acting upon Mitchell's arbitration complaint, and in accordance with NGFA Arbitration Rules Section 5(b), the NGFA submitted an arbitration services contract to Mitchell. Section 5(d) required that Mitchell, "complete the contract for arbitration within fifteen (15) days from the date the party receives the contract from the National Secretary." Despite repeated requests and notices from the NGFA, Mitchell never indicated in any manner an intention to complete the contract for arbitration, respond to NGFA's inquiries, or otherwise participate further in these arbitration proceedings.

Thus, it appeared that Mitchell made a conscious decision to disregard these arbitration proceedings. Therefore, under the NGFA Arbitration Rules, entry of dismissal against Mitchell was appropriate. Pursuant to Section 5(e) of the Arbitration Rules, Mitchell was advised that it could apply to vacate the dismissal within 15 days. Mitchell did not make such application or otherwise respond to NGFA's notices.

Order

THEREFORE, IT IS ORDERED THAT:

Plaintiffs Maurice Mitchell's, Marvin Mitchell's and Mitchell Farms Clearing Account's claims for damages against defendant Cargill Inc. hereby are dismissed.

Dated: May 20, 2005

NATIONAL GRAIN AND FEED ASSOCIATION

Charles M. Delacruz
National Secretary