



National Grain and Feed Association

Arbitration Decision

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January 12, 2012

Arbitration Case Number 2577

Plaintiff: Sunrise Cooperative Inc., Fremont, Ohio

Defendant: Logan Irons d/b/a Logan Irons Limited Partnership, Bellevue, Ohio

Factual and Procedural Background

The plaintiff, Sunrise Cooperative Inc. (Sunrise), requested the entry of a default judgment in the amount of \$181,906.27 against the defendant, Logan Irons d/b/a Logan Irons Limited Partnership (Irons). The default judgment was granted for the reasons set forth below.

Sunrise submitted an arbitration complaint dated Aug. 4, 2011 to the National Grain and Feed Association (NGFA). The complaint was submitted pursuant to a July 26, 2011 Order Compelling Arbitration and Staying Case Pending an Arbitration Decision, which was issued by the Court of Common Pleas of Huron County, Ohio. The complaint alleged that Irons failed to perform on Sunrise contract nos. 5289, 35713, 37137, 37964, 40373, 41427, 52902, 47143, and 61658 for #2 yellow corn; contract nos. 5288, 37963, 40374, and 357121 for soft red winter wheat; and contract nos. 385481, 5292, 47099, and 48317 for #2 yellow soybeans.

Each of the contracts contained the following provision under "Terms and Conditions":

1. The rules and regulations of the National Grain and Feed Association shall govern except as modified or limited herein, and both parties agree to be bound hereby. The parties both agree that the sole remedy for resolution of all disagreements or disputes arising between the parties under this agreement shall be arbitration proceedings before NGFA under NGFA Arbitration Rules. The decision and award determined by such arbitration shall be final and binding upon both parties.

Acting upon Sunrise's complaint, NGFA prepared an arbitration services contract and submitted it to Sunrise for execution. By certified mail dated Aug. 8, 2011, NGFA also sent to Irons' counsel a letter providing notice of these proceedings with copies of Sunrise's complaint and attachments, as well as the NGFA Trade Rules and

Arbitration Rules. The certified mail return receipt confirmed that this mailing to Irons was signed for and received on Aug. 11, 2011.

Upon receipt of the duly executed arbitration services contract from Sunrise, NGFA then sent it with accompanying correspondence to Irons' counsel by certified mail on Aug. 24, 2011. The certified mail return receipt confirmed that this mailing to Irons was signed for and received on Aug. 26, 2011.

On Sept. 30, 2011, NGFA sent to Irons another letter by certified mail. The certified mail return receipt confirmed that this mailing was signed for and received on Oct. 3, 2011. NGFA's letters of Aug. 24 and Sept. 30 to Irons specifically provided notice that Sections 5(c) and (d) of the NGFA Arbitration Rules required that the signed contract be returned within fifteen (15) days.

After still not receiving any response from Irons, or any indication that a response was forthcoming, NGFA sent yet another notice to Irons' counsel on Oct. 28, 2011 by certified mail. 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 the Defendant at any time, which the Plaintiff may enforce in a court of law.*** [Emphasis in original.]

The certified mail return receipt confirmed that this mailing was signed for and received on Oct. 31, 2011.

NGFA has yet to receive an executed arbitration services contract from Irons, despite the repeated attempts by NGFA to contact Irons.

Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of the court order and the contracts and by way of Sunrise's status as a NGFA active member.

Sunrise 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 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." Sunrise properly executed and returned the arbitration services contract. Irons refused to comply with the court's order and the NGFA Arbitration Rules, and refused to respond to any requests from NGFA for the executed contract.

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 appeared that Irons made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary found that entry of default judgment against Irons was proper and warranted.

Therefore, on Dec. 5, 2011, NGFA entered a default judgment against the defendant. The defendant was also advised that NGFA Arbitration Rule Section 5(e) 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." In this case, the defendant did not apply to vacate the default judgment pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. Sunrise Cooperative Inc. is awarded judgment against Logan Irons d/b/a Logan Irons Limited Partnership for \$181,906.27.
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. This award is not intended to preclude the plaintiff from pursuing an additional award for interest, legal fees or costs in a court of law.

Dated: December 5, 2011

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary