



National Grain and Feed Association

Arbitration Decision

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December 4, 2008

Arbitration Case Number 2256

Plaintiff: Cargill, Inc., Minneapolis, Minn.

Defendant: Mark Holtzen, Davenport, Neb.

Factual and Procedural Background

The plaintiff, Cargill, Inc. (Cargill), requested the entry of a default judgment in the amount of \$43,604.76 against the defendant, Mark Holtzen (Mr. Holtzen). The default judgment was granted for the reasons set forth below.

Cargill submitted an arbitration complaint dated April 10, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Mr. Holtzen failed to perform on duly signed Cargill contract nos. 33136, 33498, 33499, 34273, 34637, 34905, 34969, and 33500 for delivery of #2 yellow corn.

Each of the contracts stated the following under "PURCHASE TERMS:"

1. **NGFA Trade and Arbitration Rules.** Unless otherwise provided herein, this Contract shall be subject to the Trade Rules of the National Grain and Feed Association (NGFA), which Trade Rules are incorporated herein by reference. The parties agree that the sole forum for resolution of all disagreements or disputes between the parties arising under this Contract or relating to the formation of this Contract shall be arbitration proceedings before NGFA pursuant to NGFA Arbitration Rules. The decision and award determined by such arbitration shall be final and binding upon both parties and judgement upon the award may be entered in any court having jurisdiction thereof. Copies of the NGFA Trade and Arbitration Rules are available from Buyer upon request and are available at www.ngfa.org. (Emphasis in Original).

Acting upon Cargill's complaint, the NGFA prepared an arbitration services contract and submitted it to Cargill for execution. By certified mail dated May 21, 2008, the NGFA also sent to Mr. Holtzen a letter providing notice of these proceedings with copies of Cargill's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. This certified mailing was returned unclaimed.

Upon receipt of the duly executed arbitration services contract from Cargill, the NGFA then sent it with accompanying correspondence and a copy of the initial March 21, 2008 mailing to Mr. Holtzen by FedEx mail on June 11, 2008. Federal Express confirmed that this mailing to Mr. Holtzen was signed for and received on June 13, 2008.

On August 4, 2008, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on August 6, 2008. The NGFA's letters of June 11, 2008 and August 4, 2008 to Mr. Holtzen 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 Mr. Holtzen, or any indication that a response was forthcoming, the NGFA sent yet another notice to Mr. Holtzen on September 11, 2008 by Federal Express delivery. 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 you at any time, which the Plaintiff may enforce in a court of law.*** [Emphasis in original].

Federal Express confirmed that this mailing was delivered to Mr. Holtzen on September 15, 2008.

The NGFA has yet to receive an executed arbitration services contract from Mr. Holtzen, despite the repeated attempts by NGFA to contact him.

Default Judgment

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

Cargill 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." Cargill properly executed and returned the arbitration services contract. Mr. Holtzen refused to comply with the NGFA Arbitration Rules, and refused to respond to any arbitration-related mailings.

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 appears that Mark Holtzen made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary finds that entry of default judgment against Mark Holtzen is proper and warranted.

Therefore, on October 23, 2008, the NGFA entered a default judgement 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 judgement pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. Cargill, Incorporated is awarded judgment against Mark Holtzen for \$43,604.76.
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: October 23, 2008

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary