



National Grain and Feed Association

Arbitration Decision

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January 28, 2010

Arbitration Case Number 2263

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: Scott Morgan, Dexter, Mo.

Factual and Procedural Background

The plaintiff, Cargill Inc. (Cargill), requested the entry of a default judgment in the amount of \$244,300 against the defendant, Scott Morgan (Morgan). The default judgment was granted for the reasons set forth below.

Cargill submitted an arbitration complaint dated May 20, 2008, to the National Grain and Feed Association (NGFA). The complaint alleged that Morgan failed to perform on various contracts with Cargill for the delivery of wheat, soybeans, and corn. The proceedings were stayed until Dec. 8, 2008, at the parties' request so that they could attempt to negotiate a settlement without further involvement in the process.

Pursuant to NGFA Arbitration Rules Section 5(b), NGFA then prepared an arbitration services contract, which provided that the parties specifically, "agree to comply with all NGFA Arbitration Rules." The arbitration services contract also specifically stated: "The parties agree that noncompliance with any NGFA Arbitration Rules may result in a default judgment." Both the plaintiff and defendant executed the arbitration services contract.

Pursuant to NGFA Arbitration Rules Section 7(b), on April 6, 2009, NGFA then sent notification to Cargill requesting its First Argument. A courtesy copy of this notification was also provided to Morgan's counsel. This notification specifically reminded the parties about the procedures and deadlines provided in the Arbitration Rules for the preparation and filing of arguments, including that Cargill then had twenty (20) days from receipt of the notice to file its First Argument. Cargill filed its First Argument in a timely manner.

On May 22, 2009, NGFA forwarded a copy of Cargill's First Argument to Morgan's counsel by certified mail, along with a request for Morgan's Answer. The certified mail confirmation receipt from the U.S. Postal Service confirmed that this mailing was signed for and received by Morgan's counsel on May 26, 2009. As in the compa-

table notification provided to Cargill regarding the filing of its argument, this letter to Morgan's counsel specifically reminded the defendant as follows:

"In accordance with Section 7(d) of the NGFA Arbitration Rules, the defendant shall have twenty (20) days from the date of receipt of the plaintiff's first argument in which to file an answer."

The deadline for the filing of a response by Morgan was consequently on June 15, 2009. NGFA did not receive a filing or any other communication from Morgan or his counsel until Aug. 3.

NGFA Arbitration Rule Section 7(i) provides as follows:

"In addition to default judgments issued pursuant to Section 5(d), where a party has failed to file arbitration papers in accordance with the time limits specified in this Section or by the National Secretary, the delinquent party shall be deemed to be in default, except there is no obligation to file a rebuttal or surrebuttal."

The NGFA has very specific and limited authority to extend deadlines provided that 1) they are requested prior to expiration of the deadline; 2) the extension is for no more than 20 days; and 3) good cause is shown. Specifically, NGFA Arbitration Rule 7(i) provides:

"The National Secretary may for good cause shown extend the time limits specified herein for a period no longer than twenty (20) days from the end of the specified time period. Requests for extension of time must be made prior to expiration of the specified time period."

In accordance with its own rules, NGFA does not have authority or discretion to unilaterally circumvent or create exceptions to the rules

by accepting a late filing. In situations where all the parties consent and agree to accept the filing of a late argument, NGFA can permit an arbitration to proceed with an argument filed after the deadline.

In this case, Morgan's filing was almost 50 days beyond the deadline, and no extension had been discussed beforehand. Therefore, when the argument was received on Aug. 3, 2009, NGFA contacted Cargill to ask whether Cargill would consent to submission of the late argument by Morgan.

On Aug. 6, 2009, Cargill sent a letter to NGFA, stating as follows:

"This letter is to inform you that Cargill will not accept Morgan's Answer filed with NGFA on August 3, 2009, which is 48 days past the date it was due under NGFA

Arbitration Rule 7(d). It is our position that Mr. Morgan should have been aware of and/or been properly advised of the deadlines involved with this arbitration proceeding, where he had been duly represented by legal counsel up to the point of our filing of the arbitration matter and where he received a copy of the arbitration agreement, which he acknowledged."

On Nov. 18, 2009, Cargill sent another letter to NGFA, which stated:

"I am writing to reconfirm with you that Cargill does not agree to grant an extension of time to Scott Morgan to allow him to file an Answer with NGFA in connection with the above arbitration matter."

Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of the contracts between the parties and the NGFA arbitration services contract.

Both Cargill and Morgan properly executed and returned the arbitration services contract, thus agreeing to comply with all NGFA Arbitration Rules and procedures.

Cargill properly and in a timely manner filed its First Argument under the NGFA Arbitration Rules. As Morgan failed to comply with the deadline or request an extension under the rules, and Cargill declined to consent to the late filing, the NGFA Arbitration Rules required that a default judgment be entered in this case.

The Award

THEREFORE, IT IS ORDERED THAT:

1. Cargill Inc. is awarded judgment against Scott Morgan for \$244,300.
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 28, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary