



National Grain and Feed Association

Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

January 28, 2010

Arbitration Case Number 2413

Plaintiff: Cargill Inc., Minneapolis, Minn.

Defendant: Kevin Otto and Kevin Otto, as general partner of Kevin Otto Limited Partnership, Belle Plaine, Minn.

Factual and Procedural Background

The plaintiff, Cargill Inc. (Cargill), requested the entry of a default judgment in the amount of \$174,073.75 against the defendant, Kevin Otto, and Kevin Otto, as general partner of Kevin Otto Limited Partnership (Otto). The default judgment was granted for the reasons set forth below.

Cargill submitted an arbitration complaint dated Feb. 10, 2009 to the National Grain and Feed Association (NGFA). The complaint alleged that Otto failed to perform on various contracts with Cargill for the delivery of yellow corn and yellow soybeans.

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 May 26, 2009, NGFA then sent notification to Cargill requesting its First Argument. A courtesy copy of this notification was also provided to Otto. 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 June 26, 2009, NGFA forwarded a copy of Cargill’s First Argument to Otto by certified mail, along with a request for Otto’s Answer. The certified mail confirmation receipt from the U.S. Postal Service confirmed that this mailing was delivered to Otto on July 14, 2009. As in the comparable notification

provided to Cargill regarding the filing of its argument, this letter to Otto 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 Otto was consequently on Aug. 3, 2009. NGFA did not receive a filing or any other communication from Otto related to the filing of Otto’s Answer on or before the Aug. 3 deadline. On Aug. 11, 2009, Otto and NGFA communicated by telephone.

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.

When NGFA and Otto communicated on Aug. 11, Otto was reminded of these rules and circumstances given that the deadline had already passed.

On Aug. 13, 2009, Cargill stated by letter to NGFA that,

“Cargill will not grant Kevin Otto’s request for an extension to file his Answer with NGFA,” and that it was *“[Cargill’s] position that Mr. Otto should have been aware of the deadlines involved with this arbitration proceeding as set forth in the NGFA Arbitration Service Contract, which he acknowledged on April 27, 2009.”*

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 Kevin Otto 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 Otto 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 Otto 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 Kevin Otto and Kevin Otto as general partner of Kevin Otto Limited Partnership for \$174,073.75.
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