



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

December 3, 2009

Arbitration Case Number 2460

Plaintiff: DeBruce Feed Ingredients Inc., St. Louis, Mo.

Defendant: Southern Comfort Dairy, Vega, Tex.

Factual and Procedural Background

The plaintiff, DeBruce Feed Ingredients Inc. (DeBruce), requested the entry of a default judgment in the amount of \$11,932.07 against the defendant, Southern Comfort Dairy (Southern Comfort). The default judgment was granted for the reasons set forth below.

DeBruce submitted an arbitration complaint dated July 6, 2009 to the National Grain and Feed Association (NGFA). The complaint alleged that Southern Comfort failed to perform on duly signed DeBruce contract no. 44645 for canola and contract no. 44656 for dried distillers grain.

The contracts contained the following clause under "Additional Term and Condition of Sale":

This contract is made and entered into in the State of Missouri, and the relationships between the applicant, the company, and the guarantor shall be interpreted and construed in accordance with, and governed by, the laws of the State of Missouri without regard to conflict of law rules. Buyer and Seller agree that all controversies between them under this contract be settled by arbitration in accordance with the rules and regulations of the National Grain and Feed Association pursuant to its arbitration rules. Buyer and Seller agree that judgment may be entered upon any arbitration award in any court of competent jurisdiction.

Acting upon DeBruce's complaint, the NGFA prepared an arbitration services contract and submitted it to DeBruce for execution. By certified mail dated Aug. 4, 2009, the NGFA also sent to Southern Comfort a letter providing notice of these

proceedings with copies of DeBruce's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Southern Comfort was signed for and received on Aug. 7, 2009.

Upon receipt of the duly executed arbitration services contract from DeBruce, the NGFA then sent it with accompanying correspondence to Southern Comfort by certified mail on Aug. 21, 2009. The certified mail return receipt confirmed that this mailing to Southern Comfort was signed for and received on Aug. 26, 2009.

On Aug. 27, 2009, a representative of Southern Comfort contacted the NGFA by telephone. He indicated that Southern Comfort did not dispute that damages were owed to DeBruce and that the parties were attempting to reach a resolution between themselves.

After not hearing further, on Sept. 24, 2009, the NGFA sent to Southern Comfort another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Sept. 28, 2009. The NGFA's letters of Aug. 21 and Sept. 24, 2009 to Southern Comfort 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.

On Oct. 1, 2009, a representative of Southern Comfort contacted the NGFA by telephone again, stating that a default judgment could be issued in the case, as Southern Comfort did not dispute the amount it owed DeBruce.

Default Judgment

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

DeBruce 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." DeBruce properly executed and returned the arbitration services contract. South-

ern Comfort decided not to arbitrate this dispute and, instead, to be subject to this default judgment.

Therefore, on Nov. 12, 2009, 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. DeBruce Feed Ingredients Inc. is awarded judgment against Southern Comfort Dairy for \$11,932.07.
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: November 12, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary