



National Grain and Feed Association

Arbitration Decision

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November 17, 2011

Arbitration Case Number 2510

Plaintiff: FGD LLC, Bowling Green, Ohio

Defendant: Kent Donoho, Bluford, Ill.

Factual and Procedural Background

The plaintiff, FGD LLC (FGDI), requested the entry of a default judgment in the amount of \$41,483.94 against the defendant, Kent Donoho (Donoho). The default judgment was granted for the reasons set forth below.

FGDI submitted an arbitration complaint dated April 20, 2010 to the National Grain and Feed Association (NGFA). The complaint alleged that Donoho failed to perform on duly signed FGDI contract nos. 36270, 36302, and 37936 for wheat, contract no. 36057 for soybeans, and contract nos. 36153, 36058, 36240, 37709, 37731, 37919, 37920, 40031, 40037, 40038, 40039, and 40040 for corn.

Each of the contracts stated: "This sale is made subject to the trade and arbitration rules of the National Grain and Feed Association." Each contract also contained the following provision under "Terms and Conditions":

1. NGFA® TRADE RULES AND ARBITRATION TO APPLY: Except as otherwise provided herein, this contract shall be subject to the Trade Rules of the National Grain and Feed Association (NGFA), which are incorporated herein. The parties agree that the sole remedy for resolution of any and all disagreements or disputes arising under or related to this contract (including, but not limited to, and statutory or tort claims arising from the relationship between the parties) shall be through arbitration proceedings before the NGFA pursuant to the NGFA® Arbitration Rules. The decision and award determined through such arbitration shall be final and binding upon the parties. Judgment upon the arbitration award may be entered and enforced in any court or tribunal having jurisdiction thereof. (Copies of the NGFA®

Trade Rules and Arbitration Rules are available upon request and also from the National Grain and Feed Association: Telephone: 202-289-0873; Website: <http://www.ngfa.org>). The parties agree that any arbitration conducted hereunder shall be governed by the Federal Arbitration Act, 9 United States Code §§ 1-16, as now existing or hereinafter amended.

Acting upon FGDI's complaint, NGFA prepared an arbitration services contract and submitted it to FGDI for execution. By certified mail dated June 29, 2010, NGFA also sent to Donoho a letter providing notice of these proceedings with copies of FGDI's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Donoho was signed for and received on July 2, 2010.

Upon receipt of the duly executed arbitration services contract from FGDI, NGFA then sent it with accompanying correspondence to Donoho by certified mail on July 26, 2010. The certified mail return receipt confirmed that this mailing to Donoho was signed for and received on July 30, 2010.

On Aug. 11, 2010, Donoho contacted NGFA by telephone with questions about the arbitration process. He indicated that he would follow up with NGFA.

After not hearing further from Donoho, on Oct. 1, 2010, NGFA sent him another letter by certified mail. The certified mail return receipt confirmed that this mailing was signed for and received on Oct. 4, 2010. NGFA's letters of July 26 and Oct. 1, 2010 to Donoho 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 Donoho, or any indication that a response was forthcoming, NGFA sent yet another notice to Donoho on Jan. 7, 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 you 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 by Donoho on Jan. 11, 2011.

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

Default Judgment

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

FGDI 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." FGDI properly executed and returned the arbitration services contract. Donoho refused to comply with 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 Donoho 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 Donoho was proper and warranted.

Therefore, on Oct. 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. FGDI LLC is awarded judgment against Kent Donoho for \$41,483.94.
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: October 5, 2011

NATIONAL GRAIN AND FEED ASSOCIATION

By: **Charles M. Delacruz**
National Secretary