



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

May 17, 2012

Arbitration Case Number 2521

Plaintiff: McAlister Grain Co., Friars Point, Miss.

Defendant: Richard J. Young, Jr. and Double Y Farms Inc., Alligator, Miss.

Factual and Procedural Background

The plaintiff, McAlister Grain Co. (McAlister), requested the entry of a default judgment in the amount of \$66,300 against the defendants, Richard J. Young, Jr. and Double Y Farms Inc. (Young and Double Y Farms). The default judgment was granted for the reasons set forth below.

McAlister submitted an arbitration complaint dated Aug. 27, 2010 to the National Grain and Feed Association (NGFA). The complaint alleged that Young and Double Y Farms failed to perform on duly signed McAlister contract nos. 19117 and 19129 for delivery of #1 yellow soybeans.

Each of the contracts contained the following provision:

NGFA Arbitration of Disputes: The parties to this contract agree that the sole remedy for resolution of any and all disagreements or disputes arising under this contract shall be through arbitration proceedings before the National Grain and Feed Association (NGFA) pursuant to the NGFA Arbitration Rules. The decision and award determined through such arbitration shall be final and binding upon the Buyer and Seller. Judgement upon the arbitration award may be entered and enforced in any court having jurisdiction thereof. (Copies of the NGFA Arbitration Rules are available upon request; or by contacting the National Grain and Feed Association, 1201 New York Ave., NW, Suite 830, Washington, DC 20005.) [Emphasis in original.]

Acting upon McAlister's complaint, NGFA prepared an arbitration services contract and submitted it to McAlister for execution. By certified mail dated Sept. 24, 2010, NGFA also sent to Young and Double Y Farms a letter providing notice of these proceedings

with copies of McAlister's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Young and Double Y Farms was signed for and received on Sept. 28, 2010.

Upon receipt of the duly executed arbitration services contract from McAlister, NGFA then sent it with accompanying correspondence to Young and Double Y Farms by certified mail on Nov. 9, 2010. The certified mail return receipt confirmed that this mailing to Young and Double Y Farms was signed for and received on Nov. 12, 2010.

On Jan. 7, 2011, NGFA sent to Young and Double Y Farms another letter by certified mail. The certified mail return receipt confirmed that this mailing was signed for and received on Jan. 18, 2011. NGFA's letters of Nov. 9, 2010 and Jan. 7, 2011 to Young and Double Y Farms 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 Young and Double Y Farms, or any indication that a response was forthcoming, NGFA sent yet another notice to Young and Double Y Farms on Feb. 3, 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 delivered to Young and Double Y Farms on Feb. 9, 2011.

On Feb. 18, 2011, Young contacted NGFA by telephone and requested that another copy of the Arbitration Services Contract be sent. NGFA sent another copy to Young and Double Y Farms on Feb. 24, 2011 by certified mail. The certified mail return receipt confirmed that this mailing was signed for and received on March 7, 2011.

NGFA had not received an executed arbitration services contract from Young and Double Y Farms, despite the repeated attempts by NGFA to contact them. Accordingly, on April 29, 2011, NGFA issued a default judgment against Young and Double Y Farms which stipulated 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.” This mailing was returned unclaimed, and resent to the defendant on June 2, 2011.

On June 7, 2011, Mr. Young contacted NGFA by telephone confirming he had received the judgment and inquiring about the process to vacate a judgment. On June 22, 2011, Young and Double Y Farms sent a letter to the NGFA summarizing the arguments that he would present to an arbitration committee and requesting that the default judgment be vacated on the grounds that he had not in fact received or read any of the NGFA’s prior notifications. The mailing also contained a check representing the arbitration services fee.

As Young and Double Y Farms’ application to vacate the default judgment complied with NGFA Arbitration Rules Section 5(e), the NGFA granted his request. On June 23, 2011, NGFA sent Young and Double Y Farms another copy of the arbitration services contract, which he signed and returned to NGFA. The arbitration services contract provides that the parties agree to submit the controversy to arbitration by NGFA, including that the parties specifically “agree to comply with all NGFA Arbitration Rules.” The arbitration services contract also specifically states: “The parties agree that noncompliance with any NGFA Arbitration Rules may result in a default judgment.” [Emphasis added.]

Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of the contracts, by way of McAlister’s status as a NGFA active member, and pursuant to the terms of the arbitration services contract.

Both McAlister and Young and Double Y Farms properly executed and returned the arbitration services contract, thus agreeing to comply with all NGFA arbitration procedures. McAlister properly and in a timely manner filed its First Argument under NGFA Arbitration Rules Section 7(b).

NGFA Arbitration Rule Section 7(i) provides for the following:

Pursuant to the NGFA Arbitration Rules, on Aug. 1, 2011, NGFA sent a request to McAlister for its First Argument (with a courtesy copy to Young and Double Y Farms). This notice reminded the parties about the procedures contained in the Arbitration Rules for preparing their arguments, including that McAlister then had twenty (20) days from receipt of the notice to file its First argument. On Aug. 19, 2011, NGFA issued a twenty day extension to McAlister for filing its argument. McAlister subsequently filed its first argument in a timely manner.

On Sept. 15, 2011, NGFA sent to Young and Double Y Farms by certified mail a copy of McAlister’s first argument along with correspondence providing Young and Double Y Farms twenty days to submit an answer to McAlister’s first argument. The certified mail return receipt confirmed that this mailing was signed for and received on Sept. 20, 2011. However, the NGFA did not receive an answer from Young and Double Y Farms or any indication that an answer was forthcoming.

Therefore, on Feb. 22, 2012, NGFA sent yet another letter to Young and Double Y Farms, which confirmed that they had not submitted an answer, and advised as follows:

On September 15, 2011, we sent to you a copy of the first argument filed by the plaintiff, McAlister Grain Company, along with a request for your answer. Our notice specifically stated that, “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.” Our records show that you received our mailing on September 20, 2011. To date, we have not received an answer from you in this case. Please advise if you have any information to the contrary.

The certified mail return receipt confirmed that this mailing was signed for and received on March 5, 2012.

The NGFA has yet to hear further from Young and Double Y Farms, despite the attempts to contact them.

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.

As it appeared that Young and Double Y Farms made a conscious decision to disregard these arbitration proceedings, pursuant to Section 7(d) of the NGFA Arbitration Rules, the National Secretary found that entry of default judgment against Young and Double Y Farms was proper and warranted.

The Award

THEREFORE, IT IS ORDERED THAT:

1. McAlister Grain Co. is awarded judgment against Richard J. Young, Jr. and Double Y Farms Inc. for \$66,300.
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: April 17, 2012

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary