



National Grain and Feed Association

Arbitration Decision

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September 8, 2011

Arbitration Case Number 2530

Plaintiff: Frontier Trading Company, Roff, Okla.

Defendant: Ed Granger d/b/a Granger Farms, Gracemont, Okla.

Factual and Procedural Background

The plaintiff, Frontier Trading Company (Frontier), requested the entry of a default judgment in the amount of \$39,350 against the defendant, Ed Granger d/b/a Granger Farms (Granger). The default judgment was granted for the reasons set forth below.

Frontier submitted an arbitration complaint dated Nov. 16, 2010 to the National Grain and Feed Association (NGFA). The complaint alleged that Granger failed to perform on duly signed Frontier contract no. 840110 for delivery of #2 soybeans.

The contract contained the following provision above the signature line:

TERMS: Seller and Buyer agree that all disputes and controversies of any nature whatsoever between them with respect to this contract shall be arbitrated according to the Arbitration Rules of the National Grain and Feed Association, and that the decision and award determined thereunder shall be final and binding on Seller and Buyer. Except as otherwise expressly provided for herein, this contract is subject to National Grain and Feed Association trade rules in effect on the date of hereof.

Acting upon Frontier's complaint, NGFA prepared an arbitration services contract and submitted it to Frontier for execution. By certified mail dated Dec. 21, 2010, NGFA also sent to Granger a letter providing notice of these proceedings with copies of Frontier's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Granger was signed for and received on Dec. 24, 2010.

Upon receipt of the duly executed arbitration services contract from Frontier, NGFA then sent it with accompanying correspondence to Granger by certified mail on Jan. 7, 2011. The certified mail return receipt confirmed that this mailing to Granger was signed for and received on Jan. 20, 2011.

On Jan. 21, 2011, Granger contacted NGFA by telephone with questions about the arbitration process. On Jan. 27, 2011, counsel for Granger contacted NGFA by telephone. He indicated that he would send a written response to NGFA. On March 8, 2011, NGFA sent to Granger another letter by certified mail. The certified mail return receipt confirmed that this mailing was signed for and received on March 15, 2011. NGFA's letters of Jan. 7 and March 8, 2011 to Granger 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 April 27, 2011, NGFA sent yet another notice to Granger 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 on May 2, 2011.

On various occasions throughout this time period NGFA received inquiries from and communicated with Granger and attorneys claiming to represent him. On one such occasion, on May 25, 2011, a new attorney contacted NGFA on behalf of Granger. On June 6, 2011, Granger's new counsel sent a letter to NGFA. The letter stated the following:

After reviewing the facts of the case, we believe that arbitration may not apply. We respectfully request thirty (30) days before any action is taken to try and achieve an agreement that is satisfactory to both sides.

On June 16, 2011, NGFA sent a letter by certified mail in response to Granger's counsel's request. This letter stated as follows:

Please note that a default judgment could have been issued in this matter as early as January. Over the course of numerous correspondence and telephone calls, NGFA refrained from issuing a default judgment on the understanding that the parties might resolve the dispute between themselves or, in the alternative, the defendant would comply with the arbitration process.

NGFA strongly supports the parties' efforts in these cases to

reach a private resolution; however, the NGFA Arbitration rules and procedures do not permit continued undue delays.

Therefore, we will grant the latest request that NGFA refrain from issuing a default judgment until July 6, 2011. On or about that date, however, NGFA will issue a default judgment unless we receive the arbitration services contract from the defendant or confirmation from both parties that the case has settled. No further requests for extensions or delay will be considered unless submitted on behalf of both parties.

The certified mail return receipt confirmed that this mailing was signed for and received on June 21, 2011.

NGFA has yet to receive an executed arbitration services contract from Granger, nor has NGFA heard further from Granger's counsel.

Default Judgment

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

Frontier 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." Frontier properly executed and returned the arbitration services contract. Granger 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 Granger 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 Granger was proper and warranted.

Therefore, on Aug. 10, 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. Frontier Trading Company is awarded judgment against Ed Granger d/b/a Granger Farms for \$39,350.
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: August 10, 2011

NATIONAL GRAIN AND FEED ASSOCIATION

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