



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

November 3, 2011

Arbitration Case Number 2569

Plaintiff: **Bartlett Grain Co. L.P., Kansas City, Mo.**

Defendant: **Steve Sheeder, Red Oak, Iowa**
Maureen J. Pace, Atlantic, Iowa

Factual and Procedural Background

The plaintiff, Bartlett Grain Co. L.P. (the plaintiff), requested the entry of a default judgment in the amount of \$406,475 against the defendants, Steve Sheeder and Maureen Pace (the defendants). The default judgment was granted for the reasons set forth below.

The plaintiff submitted an arbitration complaint dated May 19, 2011 to the National Grain and Feed Association (NGFA). The complaint alleged that the defendants failed to perform on duly signed Bartlett contract nos. 20275, 23863, 24045, 25186, 25274, 26093, 29352, and 30182 for delivery of #2 yellow corn.

Each of the contracts stated, "Rules: National Grain & Feed Assoc." Each contract also contained the following provision:

1. NGFA Trade and Arbitration Rules. Unless otherwise provided herein, this Contract is subject to the Trade Rules of the National Grain and Feed Association (NGFA) current on the date of this Contract, which rules are incorporated herein by reference. All disputes relating to Contract creation, performance and liability will be arbitrated according to the Arbitration Rules of the NGFA. The decision and award of the NGFA arbitrators will be final and binding on both parties. Judgment upon an NGFA Arbitration award may be entered and enforced in any court of competent jurisdiction. Copies of the NGFA Trade and Arbitration Rules are available from Buyer or from www.ngfa.org. [Emphasis in original].

Acting upon the plaintiff's complaint, NGFA prepared an arbitration services contract and submitted it to the plaintiff

for execution. By certified mail dated June 2, 2011, NGFA also sent to the defendants a letter providing notice of these proceedings with copies of the plaintiff's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that the mailing to Ms. Pace was signed for and received on June 6, 2011, and that the mailing to Mr. Sheeder was signed for and received on June 20, 2011.

Upon receipt of the duly executed arbitration services contract from the plaintiff, NGFA then sent it with accompanying correspondence to the defendants by Federal Express delivery on June 16, 2011. Federal Express confirmed the mailings were delivered to each of the defendants on June 20, 2011.

On July 11, 2011, NGFA sent to the defendants another letter by Federal Express delivery. Federal Express confirmed that both of these mailings were delivered on July 13, 2011. NGFA's letters of June 16 and July 11, 2011 to the defendants 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 the defendants, or any indication that a response was forthcoming, NGFA sent yet another notice to each of the defendants on Aug. 4, 2011 by Federal Express delivery. 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].

Federal Express confirmed that these mailings were both delivered to on Aug. 8, 2011.

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

Default Judgment

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

The plaintiff 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." The plaintiff properly executed and returned the arbitration services contract. The defendants 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 the defendants 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 the defendants 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. Bartlett Grain Co. L.P. is awarded judgment against Steve Sheeder and Maureen Pace for \$406,475.
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