



National Grain and Feed Association Arbitration Decision

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May 16, 2014

CASE NUMBER 2708

Plaintiff: The Andersons Inc., Maumee, Ohio

Defendant: Don & Carolyn Haller, Wood River, Nebr.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, The Andersons, Inc. (Andersons), requested the entry of a default judgment in the amount of \$61,600 against the defendant, Don & Carolyn Haller (Haller). The default judgment is granted for the reasons set forth below.

Andersons submitted an arbitration complaint dated November 21, 2013 to the National Grain and Feed Association (NGFA). The complaint alleged that Haller failed to perform on duly signed contract nos. 014892 and 045319 with Andersons.

Each “COMMODITY PURCHASE CONTRACT” contained the following provision:

12. This Contract is also subject to the Trade Rules of the National Grain and Feed Association (“NGFA”). Further, any disputes or controversies arising out of this Contract shall be arbitrated by the NGFA pursuant to its Arbitration Rules.

The following paragraph only applies to grain delivered off the farm to a third party location.

WARNING TO SELLER: You will have no recourse to the grain dealer’s grain security posted with the Nebraska Public Service Commission (NPSC) unless you (1) demand payment from the grain dealer within thirty (30) days after the date of the last shipment of any contract; and, (2) cash any check or draft issued as payment for your grain within thirty (30) days after it’s issuance; and (3) notify the Nebraska Public Service Commission, PO Box 94927, Lincoln, NE 68509-4927, within thirty (30) days if a check or draft is returned unpaid. You will have no recourse to the grain warehouseman’s security posted with the NPSC unless you have secured a post-direct delivery storage position within thirty (30) days after the last shipment of any contract. Direct delivery of grain may affect the eligibility of the grain for participation in federal price support programs. Disputes will be resolved in NGFA arbitration. [Emphasis in original.]

Acting upon Andersons’ complaint, NGFA prepared an arbitration services contract and submitted it to Andersons for execution. By certified mail dated November 26, 2013, NGFA also sent to Haller a letter providing notice of these proceedings with copies of Andersons’ complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt was rejected then delivered successfully by Federal Express delivery. Federal Express confirmed that this mailing was delivered on December 6, 2013.

Upon receipt of the duly executed arbitration services contract from Andersons, NGFA then sent it with accompanying correspondence to Haller by Federal Express delivery on December 11, 2013. Federal Express confirmed that this mailing was delivered on January 16, 2014.

On February 4, 2014, NGFA sent to Haller another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on February 17, 2014. NGFA's letters of December 11, 2013 and February 4, 2014 to Haller 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 Haller, or any indication that a response was forthcoming, NGFA sent yet another notice to Haller on March 6, 2014 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 this mailing was delivered to Haller on March 10, 2014.

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

DEFAULT JUDGMENT

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

Andersons 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." Andersons properly executed and returned the arbitration services contract. Don & Carolyn Haller 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 appears that Haller made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary finds that entry of default judgment against Haller is proper and warranted.

Therefore, on April 9, 2014, 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 pursuant to Section 5(e).

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. The Andersons, Inc. is awarded judgment against Don & Carolyn Haller for \$61,600.
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 9, 2014

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary