



National Grain and Feed Association Arbitration Decision

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October 20, 2023

CASE NUMBER 3070

PLAINTIFF: GAVILON GRAIN, LLC, GLENWOOD, IN

DEFENDANT: JAMES COWAN, ARLINGTON, IN

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Gavilon Grain, LLC (Gavilon), requested the entry of a default judgment in the amount of \$34,079.37 against the defendant, James Cowan (Cowan). The default judgment is granted for the reasons set forth below.

Gavilon submitted an arbitration complaint dated September 14, 2022, to the National Grain and Feed Association (NGFA). The complaint alleged that Cowan failed to perform on contracts 0006504, 0006619, 0006620 and 0006505 for #2 yellow corn.

The contracts were duly executed by the parties and stated, “Rules to apply: NGFA”.

The contracts further stated under the terms and conditions as follows:

CONTROVERSIES: Controversies and/or other disagreements between Buyer and Seller arising under this Contract shall be settled by arbitration which shall be a condition precedent to any right of legal action that either Buyer or Seller may have against the other party. Any arbitration shall be in accordance with the rules of the National Grain and Feed Association [NGFA]. At the time notice of arbitration is served by either Buyer or Seller upon the other, (I) if either is a member of NGFA, the NGFA Arbitration Committee shall serve as the arbitrator; (II) if neither is a member of the NGFA, the American Arbitration Association shall serve as the arbitrator.

Acting upon Gavilon’s complaint, NGFA prepared an arbitration services contract and submitted it to Gavilon for execution. By Federal Express dated October 14, 2022, NGFA also sent to Cowan a letter providing notice of these proceedings with copies of Gavilon’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. Federal Express confirmed that this mailing to Cowan was delivered on October 20, 2022.

Upon receipt of the duly executed arbitration services contract from Gavilon, NGFA then sent it with accompanying correspondence to Cowan by Federal Express on October 28, 2022. Federal Express confirmed that this mailing to Cowan was delivered on November 2, 2022.

On January 20, 2023, NGFA sent to Cowan another letter by Federal Express. Federal Express confirmed this mailing was delivered on January 31, 2023. NGFA’s letters of November 2, 2022, and

January 20, 2023, to Cowan specifically provided notice that Rule 2(E) of the NGFA Arbitration Rules required that the signed contract be returned within fifteen (15) days.

After still not receiving any response from Cowan or any indication that a response was forthcoming, NGFA sent yet another notice to Cowan on May 19, 2023, by Federal Express. This notice further specifically stated as follows:

NGFA Arbitration Rules 2(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 Cowan on May 25, 2023.

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

DEFAULT JUDGMENT

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

Gavilon properly and in a timely manner filed its complaint under NGFA Arbitration Rule 2(A). Pursuant to Rule 2(B), NGFA then submitted an arbitration services contract to the parties. Rule 2(D) states that, "Each party must return the completed arbitration services contract within 15 days from the date the party receives it from the NGFA Secretary." Gavilon properly executed and returned the arbitration services contract. Cowan refused to comply with the NGFA Arbitration Rules, and refused to respond to any requests from NGFA for the executed contract.

NGFA Arbitration Rule 2(E) provides for the following:

Where a party fails to execute the arbitration services contract or pay the arbitration services fee, the NGFA Secretary may without further submissions by the parties enter a default judgment or such other relief as the NGFA Secretary deems appropriate.

As it appears that Cowan made a conscious decision to disregard these arbitration proceedings, pursuant to Rule 2(E) of the NGFA Arbitration Rules, the NGFA Secretary finds that entry of default judgment against Cowan is proper and warranted.

NGFA Arbitration Rule 2(E) also sets forth the requirements and conditions under which, "[a]ny party against whom a default judgment has been entered may apply to vacate the default judgment within 15 days of entry of the default judgment." Further, NGFA Arbitration Rule 7 provides that a default judgment issued by the NGFA Secretary shall be final unless properly and timely appealed by either party.

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. Gavilon Grain, LLC is awarded judgments against James Cowan for \$34,079.37.
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: September 15, 2023*

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

* On September 15, 2023, NGFA entered the default judgment against the defendant. The defendant was advised regarding the procedures for applying to vacate the default judgment, but the defendant did not apply to vacate the default judgment.