



National Grain and Feed Association Arbitration Decision

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February 12, 2024

CASE NUMBER 3116

PLAINTIFF: CHS INC., MITCHELL, SD

DEFENDANT: SWENSON PARTNERSHIP, WESSINGTON SPRINGS, SD

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, CHS Inc., requested the entry of a default judgment in the amount of \$1,506,200.00 against the defendant, Swenson Partnership. The default judgment is granted for the reasons set forth below.

The plaintiff submitted an arbitration complaint dated March 29, 2023, to the National Grain and Feed Association (NGFA). The complaint alleged that Swenson Partnership failed to perform on multiple contracts for yellow corn and soybeans.

The contracts contained the following provision under the terms and conditions:

NGFA Trade Rules. Except as otherwise expressly provided for herein, for all grain products purchased under this Contract and all other grain contracts between the parties, the National Grain and Feed Association (“NGFA”) Grain Trade Rules in effect on the date of this Contract shall apply. All disputes and controversies between Buyer and Seller with respect to this Contract must be arbitrated according to the arbitration rules of NGFA and, where the NGFA trade rules do not apply, the laws of the State of Minnesota. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract. Jurisdiction for any court proceedings arising out of or related to this contract, shall lie exclusively in the courts of Dakota County, Minnesota. In the event of breach or default by Buyer, Seller is entitled to recover all costs of collection, including reasonable attorney’s fees and costs.

Acting upon the plaintiff’s complaint, NGFA prepared an arbitration services contract and submitted it to the parties for execution. Both the plaintiff and defendant signed and returned the arbitration services contract, which specifically provides that the parties agree to submit this dispute to arbitration by NGFA and to comply with the NGFA Arbitration Rules.

The plaintiff submitted its First Argument on July 24, 2023, in accordance with NGFA Arbitration Rule 4.

On August 7, 2023, NGFA sent a letter along with a copy of the plaintiff’s First Argument to the defendant requesting its Answer and reminding the defendant that its Answer was due twenty (20) days from the date the letter was received pursuant to Rule 4. Federal Express confirmed this mailing was delivered to the defendant on August 14, 2023. Thus, the defendant’s Answer was due on September 5, 2023.

On September 13, 2023, NGFA spoke with counsel for the defendant who indicated he had not been authorized by the defendant to submit a response and was unaware of how the defendant was choosing to handle.

On October 13, 2023, NGFA sent a letter confirming the defendant's Answer had not been submitted and to provide notice that NGFA would be issuing a default judgment in this case. Federal Express confirmed this mailing was delivered to the defendant on October 19, 2023.

To date, NGFA has not received or heard anything further from the defendant.

DEFAULT JUDGMENT

Both the plaintiff and defendant executed and returned the arbitration services contract, thus agreeing to comply with all NGFA Arbitration Rules and procedures. The arbitration services contract specifically provides as follows:

The parties agree to comply with all NGFA Arbitration Rules... The parties agree that noncompliance with any NGFA Arbitration Rules may result in a default judgment.

Further, NGFA Arbitration Rule 4(I) provides as follows:

In addition to default judgments issued pursuant to Rule 2(E), where a plaintiff fails to file its first argument or a defendant fails to file its answer in accordance with the limits specified in this rule or by the NGFA Secretary, the delinquent party shall be deemed to be in default.

Pursuant to the terms of arbitration services contract and NGFA Arbitration Rule 4(I), the NGFA Secretary finds that entry of default judgment against the defendant is proper and warranted.

NGFA Arbitration Rule 2(E) also states general provisions and conditions under which a party against whom a default judgment has been entered may request to vacate the default judgment. As applicable in this case – within 15 days of receipt of this default judgment – the defendant may request the judgment be vacated and submit its Answer to the plaintiff's First Argument in compliance with the Arbitration Rules.

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. CHS Inc. is awarded judgment against Swenson Partnership for \$1,506,200.00.
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: November 2, 2023*

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

* On November 2, 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.