



National Grain and Feed Association Arbitration Decision

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July 26, 2024

CASE NUMBER 3106

PLAINTIFF: PARRISH & HEIMBECKER, LTD., TISDALE, ONTARIO, CANADA

DEFENDANT: TKN COMPANY FARM LTD., MELFORT, SASKATCHEWAN, CANADA

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Parrish and Heimbecker, Ltd., requested the entry of a default judgment in the amount of 521,945.76 CAD, converted by the plaintiff to equal 388,144.96 USD, against the defendant, TKN Company Farm Ltd. The default judgment is granted for the reasons set forth below.

The plaintiff submitted an arbitration complaint dated January 18, 2023, to the National Grain and Feed Association (NGFA). The complaint alleged that the defendant failed to perform on contracts 329290 and 357132 for Canola – West

The contracts were duly executed by the parties and stated under “Rules to Govern, Rules: National Grain & Feed Assoc.”. The contracts also stated under paragraph 12 of the terms and conditions as follows:

This Contract shall be governed by the laws of the Province in which it was written and the laws of Canada as may be applicable therein except where an issue may be decided under the National Grain and Feed Association Grain Trade Rules. Any claim relating to this Contract shall be settled by arbitration under the National Grain and Feed Association Arbitration Rules as are in effect at the date of this agreement. The parties agree to submit to arbitration. Judgment upon any arbitration award may be entered in any court or tribunal of competent jurisdiction...

Acting upon the plaintiff’s complaint, NGFA prepared an arbitration services contract and submitted it to the plaintiff for execution. By USPS Priority Mail International (USPS) dated February 24, 2023. NGFA also sent to the defendant 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. USPS confirmed that this mailing to the defendant was delivered on March 8, 2023.

Upon receipt of the duly executed arbitration services contract from the plaintiff, NGFA then sent it with accompanying correspondence to the defendant by USPS on April 28, 2023. USPS confirmed that this mailing to the defendant was delivered on May 19, 2023.

On June 23, 2023, NGFA sent to the defendant another letter by USPS. USPS confirmed this mailing was delivered on July 24, 2023. NGFA’s letters of April 28, and June 23, 2023, to the defendant

provided notice that Rule 2(E) of the NGFA Arbitration Rules required that the signed arbitration services contract be returned within fifteen (15) days.

After not receiving any response from the defendant, NGFA sent another notice to the defendant on August 18, 2023, by USPS. This notice 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].

USPS confirmed that this mailing was delivered to the defendant on August 29, 2023.

NGFA has not received an executed arbitration services contract from the defendant.

DEFAULT JUDGMENT

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

The plaintiff filed its complaint in conformity with 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." The plaintiff executed and returned the arbitration services contract. The defendant elected to not comply with the NGFA Arbitration Rules.

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.

Pursuant to Rule 2(E), NGFA finds that entry of default judgment against the defendant is 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 NGFA may be appealed under the rules by either party.

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. The plaintiff is awarded judgment against the defendant for 521,945.76 CAD, converted by the plaintiff to be 388,144.96 USD

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 27, 2023*

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

* On October 27, 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.