



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

ARBITRATION CASE NUMBER 2362

Plaintiff: Cargill, Incorporated, Minneapolis, Minn.

Defendant: Clark Farm #1, L.L.C./Brett Anthony Clark, Melville, La.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Cargill, Incorporated (Cargill), requested the entry of a default judgment in the amount of \$127,950.00 against the defendant, Clark Farm #1, L.L.C./Brett Anthony Clark (Clark). The default judgment is granted for the reasons set forth below.

Cargill submitted an arbitration complaint dated October 24, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Clark failed to perform on duly signed Cargill contract nos. 26766 and 26722 for delivery of #2 soft red winter wheat.

The contract indicated, “**Rules to Govern:** NGFA,” and under “PURCHASE TERMS,” stated as follows:

1. **NGFA Trade and Arbitration Rules.** Unless otherwise provided herein, this Contract, and all other grain contracts by and between Buyer and Seller, shall be subject to the Trade Rules of the National Grain and Feed Association (NGFA), which Trade Rules are incorporated herein by reference. The parties agree that the sole forum for resolution of all disagreements or disputes between the parties arising under any grain contract between Buyer and Seller or relating to the formation of any grain contract between Buyer and Seller shall be arbitration proceedings before NGFA pursuant to NGFA Arbitration Rules. The decision and award determined by such arbitration shall be final and binding upon both parties and judgment upon the award may be entered in any court having jurisdiction thereof. Copies of the NGFA Trade and Arbitration Rules are available from Buyer upon request and are available at www.ngfa.org. In addition to any damages otherwise provided by law, Buyer shall be entitled to recovery of its attorney’s fees and costs. [Emphasis in original].

Acting upon Cargill’s complaint, the NGFA prepared an arbitration services contract and submitted it to Cargill for execution. By certified mail dated November 10, 2008, the NGFA also sent to Clark a letter providing notice of these proceedings with copies of Cargill’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Clark was signed for and received on November 17, 2008. The NGFA received the duly executed arbitration services contract from Cargill on December 1, 2008.

On December 3, 2008, Clark's counsel contacted the NGFA by telephone to discuss a pending legal proceeding in the Federal District Court for the Middle District of Louisiana. Clark sent a letter confirming this conversation on December 4, 2008.

On December 10, 2008, the NGFA received a letter from Cargill's counsel, along with a Ruling from the U.S. District Court for the Middle District of Louisiana, granting Cargill's motion to stay the district court proceedings pending arbitration. Cargill requested that arbitration proceed.

The NGFA sent a copy of Cargill's December 10, 2008 letter and attachments, a copy of the arbitration services contract, and accompanying correspondence to Clark by certified mail on January 6, 2009, notifying Clark of the recommencement of arbitration proceedings. The certified mail return receipt confirmed that this mailing to Clark was signed for and received on January 14, 2009.

On February 13, 2009, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on February 17, 2009. The NGFA's letters of January 6 and February 13, 2009 to Clark 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 Clark, or any indication that a response was forthcoming, the NGFA sent yet another notice to Clark on March 12, 2009 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 Clark on March 16, 2009.

On March 23, 2009, the NGFA received a letter from Clark's counsel, which confirmed that Clark did not intend to proceed with the arbitration of this case.

DEFAULT JUDGMENT

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

Cargill 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.” Cargill properly executed and returned the arbitration services contract. Clark refused to comply with the NGFA Arbitration Rules, and refused to execute the 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 Clark 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 Clark Farm #1, L.L.C./Brett Anthony Clark is proper and warranted.

Therefore, on May 20, 2009, 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. Cargill, Incorporated is awarded judgment against Clark Farm #1, L.L.C./Brett Anthony Clark for \$127,950.00.
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: May 20, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary