National Grain and Feed Association

Arbitration Decision

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February 24, 2011

Arbitration Case Number 2515

Plaintiff: **Sunray Co-op, Sunray, Tex.**

Defendant: **Ron McKay Farms LLC, Dalhart, Tex.**

Factual and Procedural Background

The plaintiff, Sunray Co-op (Sunray), requested the entry of a default judgment in the amount of $13,588.78 against the defendant, Ron McKay Farms, LLC (McKay Farms). The default judgment was granted for the reasons set forth below.

Sunray submitted an arbitration complaint dated June 28, 2010 to the National Grain and Feed Association (NGFA). The complaint alleged that McKay Farms failed to perform on duly signed Sunray contract no. PC90134 for delivery of #2 yellow corn.

The contract contained the following provision:

> NGFA ARBITRATION OF DISPUTES: The parties to this contract agree that the sole remedy for resolution of any disagreement arising under this contract shall be through arbitration proceedings before the National Grain and Feed Association (NGFA) pursuant to the NGFA Arbitration Rules. The decision and award determined through such arbitration shall be final and binding. Judgment upon the arbitration award may be entered and enforced in any court having jurisdiction thereof. (Copies of the NGFA Arbitration Rules are available upon request or by contacting the National Grain and Feed Association, 1201 New York Ave., N.W., Suite 830, Washington, DC 20005) *[Emphasis in original.]*

Acting upon Sunray's complaint, NGFA prepared an arbitration services contract and submitted it to Sunray for execution. By certified mail dated Aug. 4, 2010, NGFA also sent to McKay Farms a letter providing notice of these proceedings with copies of Sunray's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to McKay Farms was signed for and received on Aug. 16, 2010.

Upon receipt of the duly executed arbitration services contract from Sunray, NGFA then sent it with accompanying correspondence to McKay Farms by certified mail on Aug. 24, 2010. The certified mail return receipt confirmed that this mailing to McKay Farms was signed for and received on Aug. 27, 2010.

On Oct. 1, 2010, NGFA sent to McKay Farms another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Oct. 5, 2010. NGFA's letters of Aug. 24 and Oct. 1, 2010 to McKay Farms 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 McKay Farms, or any indication that a response was forthcoming, NGFA sent yet another notice to McKay Farms on Nov. 9, 2010 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 McKay Farms on Nov. 11, 2010.

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

Default Judgment

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

Sunray 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." Sunray properly executed and returned the arbitration services contract. McKay Farms 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 appeared that McKay Farms made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary found that entry of default judgment against McKay Farms was proper and warranted.

Therefore, on Jan. 12, 2011, 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 judgment pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. Sunray Co-op is awarded judgment against Ron McKay Farms, LLC for $13,588.78.

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: January 12, 2011

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
          National Secretary