



National Grain and Feed Association

Arbitration Decision

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November 3, 2011

Arbitration Case Number 2563

Plaintiff: MaxYield Cooperative, West Bend, Iowa

Defendant: Dean M. Johnson, Frost, Minn.

Factual and Procedural Background

The plaintiff, MaxYield Cooperative (MaxYield), requested the entry of a default judgment in the amount of \$11,200 against the defendant, Dean M. Johnson (Johnson). The default judgment was granted for the reasons set forth below.

MaxYield submitted an arbitration complaint dated April, 27, 2011 to the National Grain and Feed Association (NGFA). The complaint alleged that Johnson failed to perform on duly signed MaxYield contract no. 3177 for delivery of yellow corn.

The contract contained the following provision:

The parties to this Contract agree that the sole remedy for resolution of any and all disagreements or disputes arising under this Contract shall be through arbitration proceedings before the National Grain and Feed Association (NGFA) pursuant to the NGFA Arbitration Rules; provided that the agreement of the parties shall be subject to an NGFA agreement to arbitrate such dispute. The decision and award determined through such arbitration shall be final and binding upon the Buyer and Seller. 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.)

Acting upon MaxYield's complaint, NGFA prepared an arbitration services contract and submitted it to MaxYield for execution. By certified mail dated May 16, 2011, NGFA also sent to Johnson a letter providing notice of these proceedings with copies of MaxYield's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Johnson was signed for and received on May 19, 2011.

Upon receipt of the duly executed arbitration services contract from MaxYield, NGFA then sent it with accompanying correspondence to Johnson by certified mail on June 1, 2011. This mailing was returned unclaimed. NGFA resent it to Johnson on July 11, 2011 by Federal Express delivery. Federal Express confirmed that this mailing was delivered on July 13, 2011.

On Aug. 4, 2011, NGFA sent to Johnson another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Aug. 8, 2011. NGFA's letters of July 11 and Aug. 4, 2011 to Johnson 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 Johnson, or any indication that a response was forthcoming, NGFA sent yet another notice to Johnson on Aug. 30, 2011 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 Johnson on Sept. 1, 2011.

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

Default Judgment

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

MaxYield 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." MaxYield properly executed and returned the arbitration services contract. Johnson 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 Johnson 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 Johnson was proper and warranted.

Therefore, on October 5, 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. MaxYield Cooperative is awarded judgment against Dean M. Johnson for \$11,200.
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 5, 2011

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary