



National Grain and Feed Association

Arbitration Decision

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September 20, 2013

Arbitration Case Number 2673

Plaintiff: Arizona Grain, Inc., Casa Grande, Ariz.

Defendant: Earth Pure Farms LLC, Mesa, Ariz.

Factual and Procedural Background

The plaintiff, Arizona Grain, Inc. (Arizona Grain), requested the entry of a default judgment in the amount of \$96,000 against the defendant, Earth Pure Farms LLC (Earth Pure). The default judgment is granted for the reasons set forth below.

Arizona Grain submitted an arbitration complaint dated Feb. 26, 2013 to the National Grain and Feed Association (NGFA). The complaint alleged that Earth Pure failed to perform on duly signed Arizona contract no. 0115577 for U.S. #2 yellow corn.

The contract stated, "ALL CONTRACT TERMS SUBJECT TO NGFA TRADE RULES INCLUDING ARBITRATION CLAUSE."

Acting upon Arizona Grain's complaint, NGFA prepared an arbitration services contract and submitted it to Arizona Grain for execution. By certified mail dated March 15, 2013, NGFA also sent to Earth Pure a letter providing notice of these proceedings with copies of Arizona Grain's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. This mailing was rejected and returned to the NGFA.

Upon receipt of the duly executed arbitration services contract from Arizona Grain, NGFA then sent the March 15, 2013 letter providing notice of the proceedings, copies of Arizona Grain's complaint and attachments, the NGFA Trade Rules and Arbitration Rules and the arbitration services contract with accompanying correspondence to Earth Pure on April 5, 2013. The initial attempt was by certified mail. After numerous attempts at different locations to ensure that Earth Pure received

this mailing, Federal Express confirmed that this mailing to Earth Pure was received on May 16, 2013.

On June 6, 2013, NGFA sent to Earth Pure another letter by Federal Express Delivery. Federal Express confirmed that this mailing was delivered on June 10, 2013. NGFA's letters of April 5 and June 6, 2013 to Earth Pure 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 Earth Pure, or any indication that a response was forthcoming, NGFA sent a notice to Earth Pure on June 17, 2013 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 Earth Pure on June 19, 2013.

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

Default Judgment

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

Arizona Grain 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." Arizona Grain properly executed and returned the arbitration services contract. Earth Pure 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 appears that Earth Pure 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 Earth Pure is proper and warranted.

Therefore, on July 24, 2013, 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. Arizona Grain, Inc. is awarded judgment against Earth Pure Farms LLC for \$96,000.
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: July 24, 2013

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary