



National Grain and Feed Association Arbitration Decision

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June 30, 2023

CASE NUMBER 3006

**PLAINTIFF: PARRISH AND HEIMBECKER, LTD.
DUGALD, MANITOBA, CANADA**

**DEFENDANT: ADAM DMYTERKO
FISHER BRANCH, MANITOBA, CANADA**

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Parrish and Heimbecker, Ltd. (P&H), requested the entry of a default judgment in the amount of 11,313.54 CAD (converted by the plaintiff to equal 8960.32 USD) against the defendant, Adam Dmyterko (Dmyterko). The default judgment is granted for the reasons set forth below.

P&H submitted an arbitration complaint dated April 18, 2022, to the National Grain and Feed Association (NGFA). The complaint alleged that Dmyterko failed to perform on contract number 317826 for #1 Canada Western Oats.

The contract was duly executed and agreed upon by both parties and stated under “Rules to Govern” “Rules: National Grain & Feed Assoc.” The contract 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. Judgement upon any arbitration award may be entered in any court of tribunal of competent jurisdiction. ...

Acting upon P&H’s complaint, NGFA prepared an arbitration services contract and submitted it to P&H for execution. By United States Postal Service Priority Mail International (USPS) dated May 25, 2022, NGFA also sent to Dmyterko a letter providing notice of these proceedings with copies of P&H’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. USPS confirmed that this mailing to Dmyterko was delivered on June 8, 2022.

Upon receipt of the duly executed arbitration services contract from P&H, NGFA then sent it with accompanying correspondence to Dmyterko by USPS on June 21, 2022. USPS confirmed that this mailing to Dmyterko was delivered on June 29, 2022.

On August 16, 2022, NGFA sent to Dmyterko another letter by USPS. USPS confirmed this mailing was delivered on August 25, 2022, NGFA's letters of June 21 and August 16, 2022, to Dmyterko specifically provided notice that Rule 2(E) of the NGFA Arbitration Rules required that the signed contract be returned within fifteen (15) days.

On September 1, 2022, Mr. Dmyterko left a telephone voicemail message for NGFA staff. On September 2, 2022, NGFA staff telephoned Mr. Dmyterko and discussed the arbitration process him.

After not receiving any further response from Dmyterko or any indication that such a response was forthcoming, NGFA sent yet another notice to Dmyterko on October 7, 2022, by USPS. This notice further stated the NGFA Arbitration Rules provide for a default judgment when a party fails to execute the arbitration contract within 15 days, and that NGFA is anticipating Mr. Dmyterko does not intend to respond further. This notice stated:

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 Dmyterko on October 28, 2022.

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

DEFAULT JUDGMENT

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

P&H properly and in a timely manner filed its complaint under 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." P&H properly executed and returned the arbitration services contract. Dmyterko refused to comply with the NGFA Arbitration Rules and refused to participate in the NGFA arbitration process.

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.

As it appears that Dmyterko made a conscious decision to disregard these arbitration proceedings, pursuant to Rule 2(E) of the NGFA Arbitration Rules, the NGFA Secretary finds that entry of default judgment against Dmyterko is proper and 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 the NGFA Secretary shall be final unless properly and timely appealed by either party.

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. Parrish and Heimbecker, Ltd. is awarded judgment against Adam Dmyterko for 11,313.54 CAD (converted by the plaintiff to equal 8,960.32 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: May 11, 2023*

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

* On May 11, 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.