



National Grain and Feed Association Arbitration Decision

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January 27, 2000

Arbitration Case Number 1970

Plaintiff: Eades Commodities Co., Omaha, Neb.

Defendant: Abel Villalpando, d.b.a. J & T Dairy, Dexter Dairy and Rock Hill Dairy, Dexter, N.M.

Factual and Procedural Background

Eades Commodities Co. (Eades), the plaintiff, requested the entry of a default judgment in the amount of \$152,514.21, plus interest, against Abel Villalpando¹, d.b.a. J&T Dairy, Dexter Dairy and Rock Hill Dairy (Villalpando), the defendant.

The judgment is granted for the reasons set forth below.

Eades filed its arbitration complaint with the National Grain and Feed Association in a letter dated Feb. 20, 1999, which was received by the NGFA on March 1, 1999. Eades' arbitration complaint alleged, among other things, that Villalpando had stopped taking shipment on contracts after Aug. 18, 1998 for various feed ingredients². Eades asserted that the contracts involved (numbers 43519, 44041, 50061, 50063 and 51139) had been made at various times through an independent broker,³ with the last contract having been entered into on June 16, 1998.

Eades asserted that on Oct. 22, 1998, it canceled contract numbers 43519, 44041, 50061 and 51139. Eades stated that an invoice for those cancellations was sent on Oct. 27, 1998 to Villalpando outlining the contract equity due Eades because of market value changes. According to Eades, contract number 50063 (for new-crop corn hominy) was canceled one month at

a time for October and November 1998. Eades said that the December portion and the remaining balance were canceled and Villalpando was invoiced on January 4, 1999.

Eades' arbitration complaint also clearly stated that each of the contracts contained the following terms and conditions:

"[T]he Feed Trade Rules of the National Grain and Feed Association shall apply on all millfeed and other commodities not specifically stated above."

Eades contended that this provision, read together with the NGFA Arbitration Rules, required the parties to submit unresolved disputes to NGFA arbitration.

Acting upon Eades' complaint, the NGFA prepared a contract for arbitration and sent it to Eades for execution by letter dated March 30, 1999. The NGFA's records also showed that the defendant, Abel Villalpando, was sent an initial notice and a copy of Eades' complaint on March 29, 1999 via Federal Express⁴.

As required by the NGFA Arbitration Rules, Eades executed the contract for arbitration and returned it with the arbitration service fee of \$1,238. Both were received by the NGFA on April 5, 1999.

¹ Some documents spell the defendant's surname as "Villalpando." The correct spelling appears to be "Villalpando."

² Corn gluten meal, corn hominy, cottonseed meal and soyhull pellets.

³ The broker was identified as: Paul Bennett, Roswell, N.M.

⁴ Federal Express Airbill Number 4670689450, which FedEx certified was delivered on March 30, 1999 to Villalpando's address: 304 Ojibwa, Dexter, NM 88230.

The NGFA then sent a letter via U.S. Postal Service certified mail⁵ dated April 7, 1999 to defendant Villalpando, which requested execution of the contract for arbitration and payment of the arbitration service fee. The NGFA letter contained the following paragraph:

“FAILURE TO COMPLY WITH THE NGFA ARBITRATION RULES AND/OR FAILURE TO FILE ANY RESPONSIVE STATEMENT WITH THE NATIONAL SECRETARY MAY RESULT IN A DEFAULT JUDGMENT ENTERED AGAINST YOU WHICH THE PLAINTIFF MAY ENFORCE IN A COURT OF LAW. FAILURE TO RESPOND TO THIS NOTICE AND PLAINTIFF’S CLAIM MAY AFFECT YOUR LEGAL RIGHTS.” [Emphasis in original.]”

The NGFA received an initial written response from Villalpando’s attorney⁶ dated May 7, 1999 to the NGFA’s April 7 letter. Villalpando’s attorney, among other things, requested copies of documents submitted by Eades and “an accounting of Mr. Villalpando’s and Rock Hill’s accounts.” The letter from Villalpando’s attorney contained a representation that it also had been sent to Eades. The NGFA also forwarded a copy to Eades. While Eades verified that it supplied the requested information to Villalpando’s attorney,

no further correspondence was received from either Villalpando or his attorney. Likewise, Villalpando did not return an executed copy of the contract for arbitration or the required arbitration service fee.

Eades’ request for entry of a default judgment included the affidavits of Robert V. Eades Jr.⁷ and Paul Bennett (the broker) attesting to the accuracy of the invoices, contract documents and related material submitted in support of Eades’ request. Mr. Eades certified that “[s]ince 1994, we have made 15 contracts with Abel Villalpando. Confirmations of contracts were sent by Allan Assmann of Eades Commodities, Vice President. Paul Bennett the broker had most direct contact with Mr. Villalpando; however, Allan Assmann also communicated directly with either Abel or his wife Bonnie on shipments and payments.” Likewise, Mr. Eades’ affidavit outlined attempts to resolve the matters at issue.

Mr. Bennett’s affidavit outlined his experience as an independent broker of animal feed ingredients and described his involvement and familiarity with the contracts at issue in this case. Copies of Bennett’s “daily log entries” related to the contracts were summarized in the affidavit and attached as exhibits.

The Decision

The defendant clearly received notice of the arbitration complaint filed against him. Likewise, Villalpando was represented by counsel, as evidenced by the correspondence dated May 7, 1999. Thus, it appeared that the defendant made a conscious decision not to proceed with NGFA arbitration.

Eades was and is a NGFA Active member. Villalpando is not a member. Section 3(a)(2) of the NGFA Arbitration Rules expressly provides, among other things, that: “[i]f the contract in dispute between a member and a nonmember provides for arbitration by the National Association or under its Arbitration Rules, the parties to the contract shall be deemed to have consented to arbitration under these Arbitration Rules.”

The plaintiff submitted a notarized statement attesting to the authenticity of the allegations, documents and damages.

The plaintiff’s notarized statement included verification that the contract confirmations were sent to the defendant. Thus, the confirmations sent out by Eades bound Villalpando. This is the result under NGFA Feed Trade Rule 2⁸ and under general commercial law, where both parties are merchants.

The contractual documents clearly provided that the transactions were subject to the NGFA Feed Trade Rules. Corn gluten meal, corn hominy, cottonseed meal and soyhull pellets are considered to be feedstuffs under NGFA Feed Trade Rule 16. Language incorporating the NGFA Trade Rules into a contract has been found to bind parties to NGFA arbitration, even where one party is not a member of the association. [See, e.g., *Hodge Brothers, Inc. v. The DeLong Co., Inc.*, 942 F. Supp. 412 (W.D. Wis. 1996).] That also was the situation in this case⁹.

⁵ The U.S. Postal Service Domestic Return Receipt “Article Number P 133 484 699” showed that the letter was delivered on April 23, 1999 and was signed for by a “Bonnie Villalpando” at the defendant’s address.

⁶ Phil Brewer, 125 W. Fourth Street, P.O. Box 298, Roswell, N.M., 88202-0298.

⁷ Mr. Eades is identified as president of Eades Commodities Co.

⁸ NGFA Feed Trade Rule 2(c) provides that “[i]f either Buyer or Seller fails to send confirmation, the confirmation sent out by the other party will be binding upon both in case of any dispute, unless confirming party has been immediately by non-confirming party as described in 2(a), of any disagreement with the confirmation received.”

⁹ NGFA Feed Trade Rule 24 provides for arbitration of disputes, as does NGFA Grain Trade Rule 42.

There was no indication that the defendant intended to execute the contract for arbitration, pay the required arbitration service fee, or otherwise comply with the NGFA Arbitration Rules. Section 5(d) of the NGFA Arbitration Rules requires a party to "complete the contract for arbitration within fifteen (15) days from the date the party receives the contract from the National Secretary." The defendant violated the time limits in the rules. Moreover, the defendant received the NGFA's notices.

Section 1 of the NGFA Arbitration Rules vests in the National Secretary the responsibility and authority to administer the NGFA Arbitration System. As such, the National Secretary makes such decisions as are necessary to implement the provisions of the NGFA Arbitration Rules. The defendant in this case failed to comply with the NGFA Arbitration Rules. Thus, it was appropriate to enter the requested award in favor of the plaintiff, Eades Commodities Co., against the defendant, Abel Villalpando, d.b.a. J&T Dairy, Dexter Dairy and Rock Hill Dairy.

Based upon the evidence presented by Eades, the following facts were deemed proven for purposes of entering a judgment by default:

Contract Number	Commodity	Price Per Ton	Original Tonnage	Tonnage Cancelled	Damages
43519	corn hominy	\$118.00	3,000	901.28	\$18,025.60
44041	soyhull pellets	\$104.00	2,000	920.42	\$31,294.28
50061	cottonseed meal	\$132.00	375	124.25	\$1,366.75
50063	corn hominy	\$115.00	4,600	4,600	\$93,562.50
51139	corn gluten meal	\$230.00	150	73.56	(\$367.80)
Total Market Damages					\$143,881.33

Each of the contracts also contained the following provision: "If payment is not timely received, Seller may charge and collect the maximum contractual rate of interest, or such higher rate as may be permitted by applicable law, on the unpaid balance hereof." Consequently, the plaintiff was entitled to an award of interest, which the plaintiff calculated as totaling \$8,632.88 through September 1999.

The Award

Therefore, it is ordered that:

- ◆ Eades Commodities Co. is awarded a judgment against Abel Villalpando, d.b.a. J&T Dairy, Dexter Dairy and Rock Hill Dairy, in the amount of \$152,514.21.
- ◆ Compound interest on the judgment shall accrue at the highest statutory rate on judgments applicable in Nebraska from Oct. 1, 1999 until paid in full.

Dated: Jan. 4, 2000

National Grain and Feed Association

By: David C. Barrett Jr., National Secretary