



National Grain and Feed Association Arbitration Decision

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January 9, 2014

CASE NUMBER 2703

Plaintiff: JBS United Inc., Sheridan, Ind.

Defendant: Stacey Ward dba Hadley Creek Farms, Barry, Ill.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, JBS United, Inc. (JBS), requested the entry of a default judgment in the amount of \$690,625.59 against the defendant, Stacey Ward dba Hadley Creek Farms (Ward). The default judgment is granted for the reasons set forth below.

JBS submitted an arbitration complaint dated September 5, 2013 to the National Grain and Feed Association (NGFA). The complaint alleged that Ward failed to perform on 23 duly signed contracts with JBS for 469,146.26 bushels of corn. The contracts numbered were F000521, F000524, F000529, F000538, F000540, F000542, F000553, P003308, P003351, P003382, P003385, P003539, P003541, P003561, P003598, P003657, P003847, P003896, P003997, P006151, P006152, P006160 and P006161.

Each contract stated under "CONTINUATION OF CONTRACT TERMS" as follows:

NGFA® TRADE RULES AND ARBITRATION TO APPLY: Except as otherwise provided herein, this contract shall be subject to the Trade Rules of the National Grain and Feed Association (NGFA), which are incorporated herein. The parties agree that the sole remedy for resolution of any and all disagreements or disputes arising under or related to this contract shall be through arbitration proceedings before the NGFA pursuant to the NGFA® Arbitration Rules. 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® Trade Rules and Arbitration Rules are available upon request and also from the National Grain and Feed Association: Telephone: 202-289-0873; Website" <http://www.ngfa.org>). The parties agree that any arbitration conducted hereunder shall be governed by the Federal Arbitration Act, 9 United States Code § 1-16, as now existing or hereinafter amended. This contract shall otherwise be governed by, and construed in accordance with, the laws of the State of Ohio (with the exception of the State of Ohio's conflict of laws statutes or caselaw). [Emphasis in original].

Acting upon JBS' complaint, NGFA prepared an arbitration services contract and submitted it to JBS for execution. By certified mail dated September 11, 2013, NGFA also sent to Ward a letter providing notice of these proceedings with copies of JBS' complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Ward was signed for and received on September 16, 2013.

Upon receipt of the duly executed arbitration services contract from JBS, NGFA then sent it with accompanying correspondence to Ward by certified mail on September 20, 2013. The certified mail return receipt confirmed that this mailing to Ward was signed for and received on September 23, 2013.

On October 15, 2013, NGFA sent to Ward another letter by certified mail. The certified mail return receipt confirmed that this mailing was signed for and received on October 19, 2013. NGFA's letters of September 20 and October 15, 2013 to Ward 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 Ward, or any indication that a response was forthcoming, NGFA sent a notice to Ward on November 7, 2013 by certified mail. 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].

This last attempt by certified mail was rejected then delivered successfully by Federal Express Delivery. Federal Express confirmed that this mailing was delivered on November 22, 2013.

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

DEFAULT JUDGMENT

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

JBS 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." JBS properly executed and returned the arbitration services contract. Ward 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 Ward 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 Ward is proper and warranted.

Therefore, on December 9, 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. JBS United, Inc. is awarded judgment against Stacey Ward dba Hadley Creek Farms for \$690,625.59.
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: December 9, 2013

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary