



National Grain and Feed Association

Arbitration Decision

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March 26, 2009

Arbitration Case Number 2336

Plaintiff: McAlister Grain Co., Friars Point, Miss.

Defendant: Mary L. Biederman, Helena, Ark.

Factual and Procedural Background

The plaintiff, McAlister Grain Co. (McAlister), requested the entry of a default judgment in the amount of \$4,685.20 against the defendant, Mary L. Biederman (Ms. Biederman). The default judgment was granted for the reasons set forth below.

McAlister submitted an arbitration complaint dated Aug. 18, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Ms. Biederman failed to perform on duly signed McAlister contract numbers 18314 and 17901 for delivery of U.S. No. 1 soft red wheat.

Each contract contained the following provision:

“16. NGFA Arbitration of Disputes: The parties of 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. The decision and award determined through such arbitration shall be final and binding upon the Buyer and Seller. Judgement 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., NW, Suite 830, Washington, DC 20005.)” *[Emphasis in original.]*

Acting upon McAlister’s complaint, the NGFA prepared an arbitration services contract and submitted it to McAlister for execution. By certified mail dated Sept. 16, 2008, the NGFA also sent to Ms. Biederman a letter providing notice of these proceedings with copies of McAlister’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Ms. Biederman was signed for and received on Sept. 19, 2008.

Upon receipt of the duly executed arbitration services contract from McAlister, the NGFA then sent it with accompanying correspondence to Ms. Biederman by certified mail on Oct. 8, 2008. The certified mail return receipt confirmed that this mailing to Ms. Biederman was signed for and received on Oct. 14, 2008.

On Nov. 13, 2008, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Nov. 17, 2008. The NGFA’s letters of Oct. 8 and Nov. 13, 2008 to Ms. Biederman 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 Ms. Biederman, or any indication that a response was forthcoming, the NGFA sent yet another notice to Ms. Biederman on Dec. 2, 2008 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 Ms. Biederman on Dec. 4, 2008.

The NGFA has yet to receive a response from Ms. Biederman, despite the repeated attempts by NGFA to contact her.

Default Judgment

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

McAlister 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." McAlister properly executed and returned the arbitration services contract. Ms. Biederman refused to comply with the NGFA Arbitration Rules, and refused to respond to any arbitration-related mailings.

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 Ms. Biederman 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 her is proper and warranted.

Therefore, on Feb. 25, 2009, the NGFA entered a default judgment against the defendant. The defendant also was 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. McAlister Grain Co. is awarded judgment against Mary L. Biederman for \$4,685.20.
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.

Dated: February 25, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: **Charles M. Delacruz**
National Secretary