



National Grain and Feed Association

Arbitration Decision

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October 22, 2009

Arbitration Case Number 2412

Plaintiff: DeBruce Grain de México, S.A. de C.V., Zona Jurica, Querétaro, México

Defendant: Empacadora de Productores Porcícolas Asociados S.A. de C.V., Monterrey, Nuevo León, México

Factual and Procedural Background

The plaintiff, DeBruce Grain de México, S.A. de C.V. (DBG), requested the entry of a default judgment in the amount of \$405,379.58 against the defendant, Empacadora de Productores Porcícolas Asociados S.A. de C.V. (Empacadora). The default judgment was granted for the reasons set forth below.

DBG submitted an arbitration complaint dated Feb. 11, 2009 to the National Grain and Feed Association (NGFA). The complaint alleged that Empacadora failed to perform on duly signed DBG contract nos. SM1302897, SM1303258, SM1303530, SM1303531, and SM1303532 for delivery of #2 or better sorghum.

Each of the contracts contained the following provision in both Spanish and English:

Any disputes under this agreement or in connection with the same shall be finally settled by arbitration in accordance with the Trade Rules and Arbitration of the "National Grain and Feed Association" headquartered in Washington D.C. United States of America.

The arbitration shall be conducted in the English language and it shall take place in the City of Washington D.C., United States of America.

Acting upon DBG's complaint, the NGFA prepared an arbitration services contract and submitted it to DBG for execution. By FedEx mail dated Feb. 17, 2009, the NGFA also sent to Empacadora a letter providing notice of these proceedings with copies of DBG's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. Federal Express confirmed that this mailing to Empacadora was delivered on Feb. 19, 2009.

Upon receipt of the duly executed arbitration services contract from DBG, the NGFA then sent it with accompanying correspondence to Empacadora by FedEx mail on Feb. 24, 2009. Federal Express confirmed that this mailing was delivered on Feb. 25, 2009.

On March 26, 2009, the NGFA sent to Empacadora another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on March 30, 2009. The NGFA's letters of Feb. 24 and March 26, 2009 to Empacadora 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 Empacadora, or any indication that a response was forthcoming, the NGFA sent yet another notice to Empacadora on April 22, 2009 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 Empacadora on April 24, 2009.

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

Default Judgment

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

DBG 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." DBG properly executed and returned the arbitration services contract. Empacadora 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 appeared that Empacadora made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary found that entry of default judgment against Empacadora was proper and warranted.

Therefore, on Sept. 15, 2009, the 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 judgment pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. DeBruce Grain de México, S.A. de C.V. is awarded judgment against Empacadora de Productores Porcícolas Asociados S.A. de C.V. for \$405,379.58 U.S.D.
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: September 15, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

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