



National Grain and Feed Association

Arbitration Decision

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September 20, 2013

Arbitration Case Number 2678

Plaintiff: Gavilon LLC, Omaha, Neb.

Defendant: Stortz Farms, Waukon, Iowa

Factual and Procedural Background

The plaintiff, Gavilon LLC (Gavilon), requested the entry of a default judgment in the amount of \$32,292 against the defendant, Stortz Farms (Stortz). The default judgment is granted for the reasons set forth below.

Gavilon submitted an arbitration complaint dated March 11, 2013 to the National Grain and Feed Association (NGFA). The complaint alleged that Stortz failed to perform on duly signed Gavilon contract no. PC8010930 for U.S. #2 yellow corn.

The contract stated, "Governing Trade Rules NAT'L GRAIN & FEED ASSN." The contract also stated under "ADDITIONAL TERMS AND CONDITIONS - SALE CONTRACT CONFIRMATION" as follows.

4. Unless otherwise provided herein, this Contract shall be subject to the National Grain and Feed Association (NGFA) Trade Rules, which Trade Rules are incorporated herein by reference. The parties agree that the sole forum for resolution of all disagreements or disputes between the parties arising under this Contract or relating to the formation of this Contract shall be arbitration proceedings before NGFA pursuant to NGFA Arbitration Rules. The decision and award determined by such arbitration shall be final and binding upon both parties and judgment upon the award may be entered in any court having jurisdiction thereof. Copies of the NGFA Trade and Arbitration Rules are available from Seller upon request and are available at www.ngfa.org. This contract is governed by and is to be interpreted pursuant to the laws of the State of Missouri without taking into account its choice of law rules except that the NGFA Trade Rules supersede state law. Buyer hereby submits to and

consents to the jurisdiction of the Courts for the State of Missouri and/or the federal courts for the District of Missouri except that the provisions concerning arbitration control over this provision. In the event of a contradiction between the terms set forth in this Contract and the NGFA Trade Rules the terms set forth herein shall control. **The parties hereby waive trial by jury in any and all litigation related to or arising out of this contract or the transactions contemplated hereby.** [Emphasis in original].

Acting upon Gavilon's complaint, NGFA prepared an arbitration services contract and submitted it to Gavilon for execution. By certified mail dated March 15, 2013, NGFA also sent to Stortz a letter providing notice of these proceedings with copies of Gavilon's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. This mailing was rejected and returned to the NGFA.

Upon receipt of the duly executed arbitration services contract from Gavilon, NGFA then sent the March 15, 2013 letter, copies of Gavilon's complaint and attachments, the NGFA Trade Rules and Arbitration Rules and the arbitration services contract with accompanying correspondence to Stortz on April 2, 2013. The last attempt by certified mail was rejected then delivered successfully by Federal Express Delivery. After numerous attempts to ensure that Stortz received this mailing, Federal Express confirmed that this mailing was delivered to Stortz on April 25, 2013.

On May 16, 2013, NGFA sent to Stortz another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on May 20, 2013. NGFA's letters of April 2 and May 16, 2013 to Stortz 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 Stortz, or any indication that a response was forthcoming, NGFA sent a notice to Stortz on June 17, 2013 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 delivery confirmed that this mailing was delivered to Stortz on June 19, 2013.

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

Default Judgment

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

Gavilon 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." Gavilon properly executed and returned the arbitration services contract. Stortz 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 Stortz 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 Stortz is proper and warranted.

Therefore, on July 24, 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. Gavilon LLC is awarded judgment against Stortz Farms for \$32,292.
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: July 24, 2013

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary