



National Grain and Feed Association Arbitration Decision

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June 30, 2022

CASE NUMBER 2930

PLAINTIFF: GUARDIAN ENERGY, LLC, PRIOR LAKE, MN

DEFENDANT: JEFF JOHNSON, WASECA, MN

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Guardian Energy, LLC (Guardian), requested the entry of a default judgment in the amount of \$53,111.21 against the defendant, Jeff Johnson (Johnson). The default judgment is granted for the reasons set forth below.

Guardian submitted an arbitration complaint dated September 30, 2021, to the National Grain and Feed Association (NGFA). The complaint alleged that Johnson failed to perform on contracts JO82425, JO82689, and JO83236 for #2 yellow corn.

The contracts were duly executed by both parties and stated as follows:

NGFA® TRADE RULES AND ARBITRATION TO APPLY: Except as otherwise provided herein, the parties' Contract as evidenced by this Purchase Contract Confirmation 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 (including, but not limited to, any statutory or tort claims arising from the relationship between the parties) shall be through arbitration proceedings before the NGFA pursuant to the NGFA® Arbitration Rules without the necessity of court order, provided further that Seller consents to enforcement of the obligation to arbitrate disputes in any state or federal court and expressly waives the defenses of personal jurisdiction and venue with respect to any such action. The decision and award determined through such arbitration shall be final and binding upon the parties. Judgment upon the arbitration award may be entered and enforced in any court having jurisdiction thereof. (Copies of the NGFA® Rules are available 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.

Acting upon Guardian's complaint, NGFA prepared an arbitration services contract and submitted it to Guardian for execution. By Federal Express dated October 7, 2021, NGFA also sent to Johnson a letter providing notice of these proceedings with copies of Guardian's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. USPS confirmed that this mailing to Johnson was delivered on October 11, 2021.

Upon receipt of the duly executed arbitration services contract from Guardian, NGFA then sent it with accompanying correspondence to Johnson by Federal Express on October 26, 2021. Federal Express confirmed that this mailing to Johnson was delivered on October 29, 2021.

On December 10, 2021, NGFA sent to Johnson another letter by Federal Express. Federal Express confirmed this mailing was delivered on December 13, 2021. NGFA's letters of October 29 and December 10, 2021, to Johnson specifically provided notice that Rule 2(E) of the NGFA Arbitration Rules required that the signed contract be returned within fifteen (15) days.

After still not receiving any response from Johnson or any indication that a response was forthcoming, NGFA sent yet another notice to Johnson on January 18, 2022, by Federal Express. This notice further specifically stated as follows:

NGFA Arbitration Rules 2(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 Johnson on January 22, 2022.

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

DEFAULT JUDGMENT

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

Guardian properly and in a timely manner filed its complaint under NGFA Arbitration Rule 2(A). Pursuant to Rule 2(B), NGFA then submitted an arbitration services contract to the parties. Rule 2(D) states that, "Each party must return the completed arbitration services contract within 15 days from the date the party receives it from the NGFA Secretary." GUARDIAN properly executed and returned the arbitration services contract. Johnson refused to comply with the NGFA Arbitration Rules, and refused to respond to any requests from NGFA for the executed contract.

NGFA Arbitration Rule 2(E) provides for the following:

Where a party fails to execute the arbitration services contract or pay the arbitration services fee, the NGFA Secretary may without further submissions by the parties enter a default judgment or such other relief as the NGFA Secretary deems appropriate.

As it appears that Johnson made a conscious decision to disregard these arbitration proceedings, pursuant to Rule 2(E) of the NGFA Arbitration Rules, the NGFA Secretary finds that entry of default judgment against Johnson is proper and warranted.

NGFA Arbitration Rule 2(E) also sets forth the requirements and conditions under which, "[a]ny party against whom a default judgment has been entered may apply to vacate the default judgment within 15 days of entry of the default judgment."

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. Guardian Energy, LLC is awarded judgment against Jeff Johnson for \$53,111.21
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: April 22, 2022*

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

* On April 22, 2022, NGFA entered the default judgment against the defendant. The defendant was advised regarding the procedures for applying to vacate the default judgment, but the defendant did not apply to vacate the default judgment.