



National Grain and Feed Association

Arbitration Decision

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November 29, 2012

Arbitration Case Number 2630

Plaintiff: Gavilon Grain LLC, Kansas City, Mo.

Defendant: Alan Bland, Rogers, Texas

Factual and Procedural Background

The plaintiff, Gavilon Grain LLC (Gavilon), requested the entry of a default judgment in the amount of \$232,312.50 against the defendant, Alan Bland (Bland). The default judgment is granted for the reasons set forth below.

Gavilon submitted an arbitration complaint dated May 7, 2012 to the National Grain and Feed Association (NGFA). The complaint alleged that Bland failed to perform on duly signed Gavilon contract nos. PC1429573 and PC1429333 for delivery of #2 yellow corn.

Each of the contracts stated: “Governing Trade Rules NAT’L GRAIN & FEEDASSN”. (Emphasis in original.) Each contract also contained the following provision under “ADDITIONAL TERMS AND CONDITIONS – PURCHASE CONTRACT CONFIRMATION”:

3. 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 Buyer 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.

Acting upon Gavilon’s complaint, NGFA prepared an arbitration services contract and submitted it to Gavilon for execution. By certified mail dated May 21, 2012, NGFA also sent to Bland 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 returned to NGFA.

Upon receipt of the duly executed arbitration services contract from Gavilon, NGFA then sent it with accompanying correspondence to Bland by Federal Express delivery on June 13, 2012. Federal Express confirmed that this mailing to Bland was received on June 15, 2012.

On July 17, 2012, NGFA sent to Bland another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on July 19, 2012. NGFA’s letters of June 13, 2012 and July 17, 2012 to Alan Bland 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 Bland, or any indication that a response was forthcoming, NGFA sent yet another notice to Bland on Aug. 13, 2012 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 Bland on Aug. 15, 2012.

NGFA has yet to receive a response from Bland, despite the repeated attempts by NGFA to contact Bland.

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. Alan Bland 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 Bland 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 Alan Bland is proper and warranted.

Therefore, on Nov. 16, 2012, 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 Grain LLC is awarded judgment against Alan Bland for \$232,312.50.
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: November 16, 2012

NATIONAL GRAIN AND FEED ASSOCIATION

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