



National Grain and Feed Association Arbitration Decision

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January 21, 2022

CASE NUMBER 2906

PLAINTIFF: FIELD FARMS MARKETING LTD., PETROLIA, ONTARIO, CANADA

DEFENDANT: PRAIRIE WIDE GRAIN INC., SASKATOON, SASKATCHEWAN, CANADA

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Field Farms Marketing Ltd. (FFM), requested the entry of a default judgment in the amount of 118,165.79 CAD (converted at a rate of 1.2096 by the plaintiff to equal 97,689.97 USD) against the defendant, Prairie Wide Grain Inc. (Prairie Wide). The default judgment is granted for the reasons set forth below.

FFM submitted an arbitration complaint dated June 10, 2021, to the National Grain and Feed Association (NGFA). The complaint alleged non-payment by Prairie Wide on contract SLEC2000 (reference number S17556-321) for lentils.

The contract was duly signed by both parties and stated “NGFA Arbitration Rules.” It also stated in paragraph 19 of the General Sales Terms as follows:

Resolution of Disputes. Any dispute, claim or controversy between the Seller and the Buyer as a result of the interpretation, performance or enforcement of any right or obligation arising from these Sales Terms or the Agreement shall be determined in accordance with the terms of these Sales Terms by arbitration to be conducted in accordance with the then appertaining rules of the NGFA ...

Acting upon FFM’s complaint, NGFA prepared an arbitration services contract and submitted it to FFM for execution. By Federal Express dated July 16, 2021, NGFA also sent to Prairie Wide a letter providing notice of these proceedings with copies of FFM’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. Federal Express confirmed that this mailing to Prairie Wide was delivered on July 20, 2021.

Upon receipt of the duly executed arbitration services contract from FFM, NGFA then sent it with accompanying correspondence to Prairie Wide by Federal Express on August 3, 2021. Federal Express confirmed that this mailing to Prairie Wide was delivered on August 9, 2021.

On August 31, 2021, NGFA sent to Prairie Wide another letter by Federal Express. Federal Express confirmed this mailing was delivered on September 2, 2021. NGFA’s letters of August 3 and August 31, 2021, to Prairie Wide 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 Prairie Wide, or any indication that a response was forthcoming, NGFA sent yet another notice to Prairie Wide on September 17, 2021, 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 Prairie Wide on September 20, 2021.

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

DEFAULT JUDGMENT

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

FFM 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." FFM properly executed and returned the arbitration services contract. Prairie Wide 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 Prairie Wide 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 Prairie Wide 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. Field Farms Marketing, Ltd. is awarded judgment against Prairie Wide Grain Inc. for 118,165.79 CAD (converted at a rate of 1.2096 by the plaintiff to equal 97,689.97 USD).

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 30, 2021*

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

* On November 30, 2021, 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.