



# National Grain and Feed Association

## Arbitration Decision

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November 20, 2007

### Arbitration Case Number 2175

**Plaintiff:** Demeter L.P., Fowler, Ind.

**Defendant:** Wilde Acres Corporation and Mr. Willie Stokes, Beloit, Wis.

#### Factual and Procedural Background

The plaintiff, Demeter L.P., requested the entry of a default judgment in the amount of \$32,500.00, plus interest, against the defendants, Wilde Acres Corporation and Mr. Willie Stokes. The default judgment is granted for the reasons set forth below.

The plaintiff submitted an arbitration complaint dated June 19, 2007 to the National Grain and Feed Association (NGFA). The complaint alleged that the defendants failed to perform in accordance with duly signed contracts (designated as Demeter contract nos. 018264 and 018336), which provided for the delivery of 25,000 bushels of yellow corn. The contracts specifically include in their "Terms" a provision stating that the contract is "subject to NGFA Arbitration."

Acting upon the plaintiff's complaint, the NGFA prepared an arbitration services contract and submitted it to the plaintiff for execution. By certified mail dated June 26, 2007, the NGFA also sent to the defendants a letter providing notice of these proceedings with copies of the plaintiff's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing was signed for and received by defendants' attorney on June 28, 2007.

Upon receipt of the duly executed arbitration services contract from the plaintiff, the NGFA then sent it with accompanying correspondence to the defendants by certified mail on July 10, 2007. The certified mail return receipt confirmed that this mailing was signed for and received by defendants' attorney on July 13, 2007.

On August 14, 2007, the NGFA then sent another letter to the defendants' attorney specifically to provide a reminder that Sections 5(c) and (d) of the NGFA Arbitration Rules required that the signed contract be returned within fifteen (15) days. On or about August 23 and 29, 2007, the defendants' attorney's

office telephoned the NGFA's office with questions about arbitration-related procedures and to advise that they were in the process of consulting with their clients.

After not hearing again from the defendants or their attorneys for a significant time period, the NGFA sent yet another notice to the defendants on September 26, 2007 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 the defendants 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 the defendants on September 28, 2007.

The NGFA did not receive an executed arbitration services contract or any other substantive response from the defendants, despite the repeated attempts by NGFA to communicate with the defendants. Therefore, on Oct. 17, 2007, the NGFA entered a default judgement against the defendants. NGFA Arbitration Rules 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, neither defendant applied to vacate the default judgement pursuant to Section 5(e).

## **Default Judgment**

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

The plaintiff 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." The plaintiff properly executed and returned the arbitration services contract. The defendants refused to comply with the NGFA Arbitration Rules, and refused to respond to the NGFA's 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 appears that the defendants 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 the defendants was proper and warranted.

## **The Award**

Therefore, it is ordered that:

1. The plaintiff is awarded judgment against the defendants for \$32,500.00.
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.

Dated: October 17, 2007

**NATIONAL GRAIN AND FEED ASSOCIATION**

By: Charles M. Delacruz  
National Secretary