



# National Grain and Feed Association

# Arbitration Decision

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July 17, 2008

## Arbitration Case Number 2220

**Plaintiff: Consolidated Grain and Barge Co., Princeton, Ill.**

**Defendant: Kramer Farms, Helenville, Wis.**

### Factual and Procedural Background

The plaintiff, Consolidated Grain and Barge Co. (CGB), requested the entry of a default judgment in the amount of \$9,237.50 against the defendant, Kramer Farms (Kramer). The default judgment was granted for the reasons set forth below.

CGB submitted an arbitration complaint dated February 22, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Kramer failed to perform on contract #139349 for #2 yellow corn. CGB claimed \$9,237.50 in damages.

This contract contained the following provision:

“(1) Seller and Buyer agree that all disputes and controversies of any nature whatsoever between them with respect to this contract shall be arbitrated according to the Arbitration Rules of the National Grain & Feed Association, and that the decision and award determined thereunder shall be final and binding on Seller and Buyer.”

Acting upon CGB’s complaint, the NGFA prepared an arbitration services contract and submitted it to CGB for execution. By certified mail dated March 3, 2008, the NGFA also sent to Kramer a letter providing notice of these proceedings with copies of CGB’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Kramer was signed for and received on March 6, 2008.

Upon receipt of the duly executed arbitration services contract from CGB, the NGFA then sent it with accompanying correspondence to Kramer by certified mail on March 11, 2008.

This certified mailing was returned unclaimed.

On April 4, 2008, the NGFA sent another letter by Federal Express delivery with another copy of the March 11 mailing. Federal Express confirmed that this mailing was delivered to Kramer on April 8, 2008. The NGFA’s letters of March 11 and April 4, 2008 to Kramer 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 Kramer, or any indication that a response was forthcoming, the NGFA sent yet another notice to Kramer on May 14, 2008 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 Kramer on May 16, 2008.

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

## Default Judgment

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

CGB 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." CGB properly executed and returned the arbitration services contract. Kramer Farms refused to comply with the NGFA Arbitration Rules, and refused to respond to any arbitration-related 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 Kramer Farms made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary found that entry of default judgment against Kramer Farms was proper and warranted.

Therefore, on June 13, 2008, the NGFA entered a default judgement 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 judgement pursuant to Section 5(e).

## The Award

**THEREFORE, IT IS ORDERED THAT:**

Consolidated Grain and Barge Company is awarded judgment against Kramer Farms for \$9,237.50.

Dated: June 13, 2008

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz  
National Secretary