



# National Grain and Feed Association

# Arbitration Decision

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November 6, 2008

## Arbitration Case Number 2255

**Plaintiff:** Northeast Missouri Grain Processors d/b/a Poet Biorefining-Macon, Macon, Mo.

**Defendant:** Jerry Felton d/b/a JJABA, Unionville, Iowa

### Factual and Procedural Background

The plaintiff, Northeast Missouri Grain Processors d/b/a Poet Biorefining-Macon (NEMO), requested the entry of a default judgment in the amount of \$17,668.00 against the defendant, Jerry Felton d/b/a JJABA (Felton). The default judgment was granted for the reasons set forth below.

NEMO submitted an arbitration complaint dated May 14, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Felton failed to perform on duly signed NEMO contract no. 10132 for delivery of yellow corn.

The contract contained the following provision under "TERMS AND CONDITIONS":

**Arbitration:** Buyer and Seller agree that all disputes and controversies between them with respect to this contract shall be arbitrated by the rules and regulations set forth by the National Grain and Feed Assn. and that judgement may be entered in any court of competent jurisdiction. Seller agrees to pay all Buyer's costs resulting from Seller's breach, including but not limited to, reasonable attorney's fees and court costs. (Emphasis in original)

Acting upon NEMO's complaint, the NGFA prepared an arbitration services contract and submitted it to NEMO for

execution. By certified mail dated May 16, 2008, the NGFA also sent to Felton a letter providing notice of these proceedings with copies of NEMO's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Mr. Felton was signed for and received on May 19, 2008.

Upon receipt of the duly executed arbitration services contract from NEMO, the NGFA then sent it with accompanying correspondence to Felton by certified mail on June 19, 2008. The certified mail return receipt confirmed that this mailing to Felton was signed for and received on June 23, 2008.

After not receiving any response from Felton, on August 4, 2008, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on August 6, 2008. The NGFA's letters of June 19, 2008 and August 4, 2008 to Felton 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.

The NGFA received a phone call from Mr. Felton on August 11, 2008 in which he stated that he had no intention of executing the arbitration services contract and that he understood that a default judgement could be entered against him.

### Default Judgment

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

NEMO properly and in a timely manner filed its complaint under NGFA Arbitration Rules Section 5(a). Pursuant to Sec-

tion 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." NEMO properly executed and returned the arbitration services contract. Felton

refused to comply with the NGFA Arbitration system in accordance with the contract.

NGFA Arbitration Rules 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 Jerry Felton d/b/a JJABA made a conscious decision to disregard these arbitration proceed-

ings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary finds that entry of default judgment against Jerry Felton d/b/a JJABA is proper and warranted.

Therefore, on September 12, 2008, the NGFA entered a default judgement against the defendant. The defendant was also advised that 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, the defendant did not apply to vacate the default judgement pursuant to Section 5(e).

## **The Award**

**THEREFORE, IT IS ORDERED THAT:**

1. Northeast Missouri Grain Processors d/b/a Poet Biorefining-Macon is awarded judgment against Jerry Felton d/b/a JJABA for \$17,668.00.
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: September 12, 2008

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz  
National Secretary