



National Grain and Feed Association

# Arbitration Decision

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March 26, 2012

## Arbitration Case Number 2586

**Plaintiff: Hannebaum Grain Co., Inc., Salina, Kan.**

**Defendant: Steve Shrader, Sweet Springs, Mo.**

### Factual and Procedural Background

The plaintiff, Hannebaum Grain Co., Inc. (Hannebaum), requested the entry of a default judgment in the amount of \$150,998.71 against the defendant, Steve Shrader (Shrader). The default judgment was granted for the reasons set forth below.

Hannebaum submitted an arbitration complaint dated Sept. 7, 2011 to the National Grain and Feed Association (NGFA). The complaint alleged that Shrader failed to perform on duly signed Hannebaum contract nos. 96822, 96823, and 96898 for delivery of #2 yellow corn.

The front of each contract stated, "TRADE RULES: NG&FA." Each contract also contained the following provision under "ADDITIONAL TERMS AND CONDITIONS":

1. The parties both agree that the sole remedy for resolution of all disagreements of disputes between the parties arising under this agreement shall be arbitration proceedings under NGFA Arbitration Rules. The decision and award determined by such arbitration shall be final and binding upon both parties.

Acting upon Hannebaum's complaint, NGFA prepared an arbitration services contract and submitted it to Hannebaum for execution. By certified mail dated Oct. 4, 2011, NGFA also sent to Shrader's counsel a letter providing notice of these proceedings with copies of Hannebaum'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 on Oct. 6, 2011.

Upon receipt of the duly executed arbitration services contract from Hannebaum, NGFA then sent it with accompanying cor-

respondence to Shrader's counsel by certified mail on Oct. 11, 2011. The certified mail return receipt confirmed that this mailing to Shrader was signed for and received on Oct. 14, 2011.

On Nov. 29, 2011, NGFA sent to Shrader's counsel another letter by certified mail. The Postal Service confirmed that this mailing was delivered on Dec. 2, 2011. NGFA's letters of Oct. 11 and Nov. 29, 2011 to Shrader's counsel 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 Shrader, or any indication that a response was forthcoming, NGFA sent yet another notice to Shrader's counsel on Dec. 19, 2011 by certified mail. 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.]

The certified mail return receipt confirmed that this mailing was signed for and received by Shrader's counsel on Dec. 22, 2011.

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

## Default Judgment

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

Hannebaum 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." Hannebaum properly executed and returned the arbitration services contract. Shrader 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 appeared that Shrader 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 Shrader was proper and warranted.

Therefore, on Feb. 1, 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 judgment pursuant to Section 5(e).

## The Award

### THEREFORE, IT IS ORDERED THAT:

1. Hannebaum Grain Co., Inc. is awarded judgment against Steve Shrader for \$150,998.71.
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: February 1, 2012

**NATIONAL GRAIN AND FEED ASSOCIATION**

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