



National Grain and Feed Association

# Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922

Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: [ngfa@ngfa.org](mailto:ngfa@ngfa.org), Web Site: [www.ngfa.org](http://www.ngfa.org)

April 4, 2013

## Arbitration Case Number 2623

**Plaintiff:** Hawkeye Commodities Company, Grimes, Iowa

**Defendant:** Anderson Seed Company, Mentor, Minn.

### Factual and Procedural Background

The plaintiff, Hawkeye Commodities Company (Hawkeye), requested the entry of a default judgment in the amount of \$162,234.40 against the defendant, Anderson Seed Company (Anderson). The default judgment is granted for the reasons set forth below.

Hawkeye submitted an arbitration complaint dated Feb. 29, 2012, to the National Grain and Feed Association (NGFA). The complaint alleged that Anderson failed to perform on duly signed Hawkeye contract no. P8559 for re-cleaned bulk oil sunflowers.

The contract no. P8559 contained the following provision under "TERMS AND CONDITIONS":

*2) Buyer and seller agree that all disputes and controversies of any nature whatsoever with respect to the contract hereby confirmed shall be arbitrated according to the Arbitration Rules of the National Grain and Feed Association whether or not the seller is a member hereof, and that the decision and award determined in such arbitration shall be final and binding.*

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

execution. Upon receipt of the duly executed arbitration services contract from Hawkeye, the NGFA submitted it to Anderson on April 11, 2012. On June 13, 2012, Anderson returned a signed arbitration services contract. The contract specifically provides that the parties agree to submit this dispute to arbitration by NGFA.

Hawkeye then submitted its First Argument on July 16, 2012, in accordance with NGFA Arbitration Rule 7(b).

On Sept. 18, 2012, NGFA sent a letter along with a copy of Hawkeye's First Argument to Anderson requesting its Answer due twenty (20) days from the date the letter was received. The certified mail return receipt confirmed that this mailing was delivered on Sept. 24, 2012. Therefore, Anderson's Answer was due on Oct. 15, 2012.

After not receiving an Answer from Anderson, or any indication that a filing was forthcoming, on Oct. 31, 2012, the NGFA contacted Anderson's counsel, who confirmed that Anderson had elected not to file an Answer. By certified mail to Anderson dated Nov. 6, 2012, NGFA confirmed that an Answer had not been filed. The certified mail return receipt confirmed that this mailing was received on Nov. 9, 2012.

### Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of the contracts and by way of Hawkeye's and Anderson's status as NGFA active members.

Hawkeye 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 which was executed by both Hawkeye and Anderson.

NGFA Arbitration Rule Section 7(i) provides for the following:

*In addition to default judgments issued pursuant to Section 5(e), where a party has failed to file arbitration papers in accordance with the time limits specified in this Section or by the National Secretary, the delinquent party shall be deemed to be in default, except there is no obligation to file a rebuttal or surrebuttal.*

Therefore, on March 12, 2013, 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 pursuant to Section 5(e).

## The Award

**THEREFORE, IT IS ORDERED THAT:**

1. Hawkeye Commodities Company is awarded judgment against Anderson Seed Company for \$162,234.40.
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: March 12, 2013

**NATIONAL GRAIN AND FEED ASSOCIATION**

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