



# National Grain and Feed Association Arbitration Decision

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February 23, 2016

## CASE NUMBER 2764

**PLAINTIFF: CHS, INC., INVER GROVE HEIGHTS, MN**

**DEFENDANT: AGRIBASE INTERNATIONAL, INC., IRVINE, CA**

### FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, CHS, Inc. (CHS), requested the entry of a default judgment in the amount of \$146,250 against the defendant, Agribase International, Inc. (Agribase). The default judgment is granted for the reasons set forth below.

CHS submitted an arbitration complaint dated July 13, 2015 to the National Grain and Feed Association (NGFA). The complaint alleged in part that Agribase failed to fulfill contract confirmation number 382708 that it entered into with CHS for 1,000 short tons of Dried Distillers Grain. This contract was duly signed by both parties.

Contract 382708 stated “TRADE RULES: NGFA.” The contract also specifically stated “THIS CONTRACT INCLUDES THE TERMS AND CONDITIONS” that incorporated the following provision:

14. Buyer and Seller agree that all disputes and controversies of any nature whatsoever between them with respect to the subject matter of this confirmation shall be arbitrated according to the arbitration rules of the applicable trade association,...

Acting upon CHS’s complaint, NGFA prepared an arbitration services contract and submitted it to CHS for execution. By Federal Express dated July 27, 2015, NGFA also sent to Agribase a letter providing notice of these proceedings with copies of CHS’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. Federal Express confirmed that this mailing to Agribase was delivered on July 30, 2015.

On August 5, 2015, a representative of Agribase contacted NGFA. The NGFA Arbitration process was discussed fully during this conversation. NGFA did not hear again from Agribase in any manner.

Upon receipt of the duly executed arbitration services contract from CHS, NGFA then sent it with accompanying correspondence to Agribase by Federal Express on August 26, 2015. Federal Express confirmed that this mailing to Agribase was delivered on September 2, 2015.

On October 14, 2015, NGFA sent to Agribase another letter by Federal Express. Federal Express confirmed this mailing was delivered on October 19, 2015. NGFA’s letters of July 27 and August 26,

2015 to Agribase 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 not receiving any further response from Agribase's initial inquiry on August 5, 2015, or any indication that a response was forthcoming, NGFA sent yet another notice to Agribase on November 19, 2015 by Federal Express. This notice further specifically stated as follows:

NGFA Arbitration Rules 2(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 Agribase on November 23, 2015.

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

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| <b>DEFAULT JUDGMENT</b> |
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NGFA established jurisdiction over this matter pursuant to the express terms of the contract and by way of CHS's status as a NGFA active member.

CHS properly and in a timely manner filed its complaint under NGFA Arbitration Rule 2(A). Pursuant to Rule 2(B), NGFA then submitted an arbitration services contract to the parties. Rule 2(D) states that, "Each party must return the completed arbitration services contract within 15 days from the date the party receives it from the NGFA Secretary." CHS properly executed and returned the arbitration services contract. Agribase refused to comply with the NGFA Arbitration Rules, and refused to respond to any requests from NGFA for the executed contract.

NGFA Arbitration Rule 2(E) provides for the following:

Where a party fails to execute the arbitration services contract or pay the arbitration services fee, the NGFA Secretary may without further submissions by the parties enter a default judgment or such other relief as the NGFA Secretary deems appropriate.

As it appears that Agribase made a conscious decision to disregard these arbitration proceedings, pursuant to Rule 2(E) of the NGFA Arbitration Rules, the NGFA Secretary finds that entry of default judgment against Agribase is proper and warranted.

NGFA Arbitration Rule 2(E) also sets forth the requirements and conditions under which, "[a]ny party against whom a default judgment has been entered may apply to vacate the default judgment within 15 days of entry of the default judgment."\*

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| <b>THE AWARD</b> |
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**THEREFORE, IT IS ORDERED THAT:**

1. CHS is awarded judgment against Agribase for \$146,250.
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: January 6, 2016

**NATIONAL GRAIN AND FEED ASSOCIATION**

By: Charles M. Delacruz  
NGFA Secretary

\* On January 6, 2016, NGFA entered the default judgment against the defendant. The defendant was advised regarding the procedures for applying to vacate the default judgment, but the defendant did not apply to vacate the default judgment.