



# 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)

July 24, 2003

## Arbitration Case Number 2039

**Plaintiff:** Cooperative Marketing Alliance, Memphis, Tenn.

**Defendant:** Curtis Henningsen, Emmetsburg, Iowa

### Factual and Procedural Background

The plaintiff, Cooperative Marketing Alliance (CoMark), requested the entry of a default judgment in the amount of \$2,971.84 against the defendant, Curtis Henningsen (Henningsen). The default judgment is granted for the reasons set forth below.

CoMark filed its arbitration complaint with the National Grain and Feed Association (NGFA) on Jan. 16, 2003. CoMark's complaint alleged, among other things, that Henningsen breached certain marketing agreements for the delivery of corn on or before July 31, 2002 and that, as a result, Henningsen consequently owed \$2,971.84 to CoMark. CoMark submitted copies of the contracts between the parties.

CoMark is a NGFA active member in good standing and was so at the time each of the contracts was executed. The contracts expressly provided for settlement of any disputes through arbitration before the NGFA. Specifically, the terms of the contracts stated as follows:

*"10. Miscellaneous*

*(m) Arbitration. The parties to this contract agree that the sole remedy for resolution of any and all disagreements or disputes arising under or related to this contract shall be through arbitration proceedings before the National Grain and Feed Association (NGFA) pursuant to the NGFA Arbitration Rules. The decision and award determined through such arbitration award may be entered and enforced in any court having jurisdiction thereof."*

Acting upon CoMark's complaint, the NGFA prepared a contract for arbitration and submitted it to CoMark for execution. By certified mail dated Jan. 23, 2003, the NGFA also sent

Henningsen a letter providing initial notice of these proceedings and copies of CoMark's complaint, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that Henningsen personally signed for and received this mailing on Jan. 25, 2003. Upon receipt of the duly executed contract for arbitration from CoMark, the NGFA then sent it by certified mail to Henningsen with a letter dated Feb. 3, 2003. The certified mail return receipt confirmed that Henningsen personally signed for and received this mailing on Feb. 7, 2003. The NGFA's Feb. 3 letter referenced the rules requiring that parties execute and return arbitration contracts within 15 days.

On Feb. 28, 2003, the NGFA sent a notice by first-class mail to Henningsen reminding him that a response was overdue and requesting that he contact the NGFA with any questions or comments. On March 18, 2003, the NGFA sent by certified mail yet another notice. This mailing included copies of the prior notices, the contract for arbitration and other documents. This notice again referenced the NGFA's Arbitration Rules, which provide for the entry of a default judgment upon failure to execute an arbitration contract within 15 days. The notice specifically stated that "[b]ased 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.] Henningsen refused to accept delivery of this letter and it was returned to the NGFA unclaimed on April 7, 2003. On April 11, 2003, the NGFA delivered that letter and attachments to Henningsen by first-class mail with yet another letter advising him of the impending entry of default judgment unless a response was received.

The NGFA has yet to receive an executed arbitration contract from Henningsen.

## Default Judgment

NGFA has jurisdiction over this matter under the express terms of the contracts between the parties. NGFA Arbitration Rule Section 3(a)(2) states as follows:

*“If the contract in dispute between a member and a nonmember provides for arbitration by the National Association or under its Arbitration Rules, the parties to the contract shall be deemed to have consented to arbitration under these Arbitration Rules.”*

Section 3(c)(4) further provides the following:

*“A general reference to NGFA rules shall be deemed to incorporate all rules of this Association including the Bylaws, Trade Rules and Arbitration Rules, and all definitions included in the Trade Rules shall apply under these Arbitration Rules, likewise.”*

The contracts between CoMark and Henningsen specifically invoked NGFA arbitration in their terms and conditions. Because of CoMark’s status as a NGFA active member and the language in the contracts, the parties were bound to arbitrate this matter.

CoMark 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 a contract for arbitration 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.”* CoMark properly executed and returned the contract for arbitration. Henningsen refused to comply with any arbitration-related mailings, including materials delivered by certified mail.

NGFA Arbitration Rule Section 5(e) provides 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.”*

Henningsen received notice of the arbitration complaint filed against him and the contract for arbitration on various occasions. Thus, it appears Henningsen made a conscious decision to disregard these arbitration proceedings. Therefore, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary finds that entry of default judgment against Henningsen is proper and warranted.

Section 5(e) also 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.”*

## The Award

Therefore, it is ordered that:

Cooperative Marketing Alliance is awarded judgment against Curtis Henningsen for \$2,971.84.

Dated: June 3, 2003

**NATIONAL GRAIN AND FEED ASSOCIATION**

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