



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: <http://www.ngfa.org>

November 11, 2004

## ARBITRATION CASE NUMBER 2084

**Plaintiff:** AgriGrain Marketing LLC, Des Moines, Iowa

**Defendant:** C.W. Thomas d/b/a Pheasant Farms, Guthrie Center, Iowa

### FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, AgriGrain Marketing LLC (AgriGrain), requested the entry of a default judgment in the amount of \$60,444.58, plus interest, against the defendant, C.W. Thomas d/b/a Pheasant Farms (Thomas).

The default judgment was granted for the reasons set forth below.

AgriGrain filed its arbitration complaint with the National Grain and Feed Association (NGFA) on Feb. 4, 2004. AgriGrain's complaint alleged that Thomas breached AgriGrain contract numbers 32685, 45386-1, 42985-1, 42986-1, 42984, 42989-1, 42988-1, 42987-1; and 45387-1 involving white corn resulting in total damages of \$60,444.58, plus interest, due to AgriGrain. AgriGrain submitted copies of the contracts between the parties with its complaint.

AgriGrain was a NGFA active member in good standing at the time the contracts were executed. Prior to its subsequent dissolution, AgriGrain assigned its rights and interests in this claim to Cargill Inc., which is currently a NGFA active member in good standing and was so at the time the contracts were executed. The contracts expressly provided for settlement of any disputes through arbitration before the NGFA. Specifically, the contracts indicated "**Rules to Govern: NGFA**" on the front page, and under "PURCHASE TERMS," the contracts stated as follows:

*"1. The parties agree that the sole remedy for resolution of all disagreements or disputes between the parties arising out of this Contract, including those related to the formation thereof, shall be arbitration proceedings under the trade association identified on the front side hereof. If no trade association is identified, then NGFA Arbitration Rules*

*then existing shall apply, and judgment upon the award may be entered in any court having jurisdiction thereof. The decision and award determined by such arbitration shall be final and binding upon both parties."*

Acting upon AgriGrain's complaint, the NGFA prepared an arbitration services contract and submitted it to AgriGrain for execution. By certified mail, the NGFA also sent Thomas a letter dated Feb. 19, 2004 providing initial notice of these proceedings and copies of AgriGrain's complaint, as well as the NGFA Trade Rules and Arbitration Rules. This mailing was delivered on Feb. 25, 2004. Upon receipt of the duly executed arbitration services contract from AgriGrain, the NGFA then sent it by certified mail to Thomas with a letter dated March 23, 2004, which referenced the NGFA Arbitration Rules that provide that the parties execute and return arbitration service contracts within 15 days. This mailing was delivered on March 26, 2004.

On May 12, 2004, the NGFA sent a notice by first-class mail to Thomas reminding him that a response was overdue and requesting that he contact the NGFA with any questions or comments. On May 28, 2004, the NGFA sent by Federal Express 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 stated specifically 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.] This mailing was delivered and signed for on June 1, 2004.

The NGFA has yet to receive an executed arbitration contract or any other response from Thomas, despite repeated attempts to contact Thomas from February 2004 through the present date.

## DEFAULT JUDGMENT

The NGFA has jurisdiction over this matter pursuant to the express terms of the contract between the parties and the NGFA Arbitration Rules. Section 3(a)(2) of the NGFA's Arbitration Rules 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."*

The contract between AgriGrain and Thomas specifically invoked NGFA arbitration in its terms and conditions. Because of AgriGrain's status as a NGFA active member and the language contained in the contract, the parties were bound to arbitrate this matter.

AgriGrain properly filed its complaint in compliance with NGFA Arbitration Rule 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."* AgriGrain properly executed and returned the contract for arbitration. Thomas refused to comply with any arbitration-related mailings, including materials delivered by certified and expedited mail.

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."*

Notice to Thomas of the arbitration complaint filed against him and the arbitration services contract was tendered on several occasions. Thus, it appears Thomas made a conscious decision to disregard these arbitration proceedings. Therefore, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary determined that entry of default judgment against Thomas was proper and warranted.

NGFA Arbitration Rule 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:

1. AgriGrain Marketing LLC is awarded judgment against C.W. Thomas d/b/a Pheasant Farms for \$60,444.58, plus interest.

Dated: September 29, 2004

**NATIONAL GRAIN AND FEED ASSOCIATION**

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