



National Grain and Feed Association

# Arbitration Decision

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August 3, 2005

## Arbitration Case Number 2098

**Plaintiff:** Archer Daniels Midland Co., Decatur, Ill.

**Defendant:** Omega Grain Co. LLC, Tucson, Ariz.

### Factual and Procedural Background

This case was ordered to arbitration before the National Grain and Feed Association (NGFA) on May 18, 2004, by Judge Richard M. Perry of the District Court of the State of Oklahoma in Garfield County.

Thereafter, on June 14, 2004, the plaintiff, Archer Daniels Midland Co. (ADM), filed a complaint for arbitration by the NGFA against the defendant, Omega Grain Co. LLC (Omega). ADM alleged in its complaint that Omega breached three contracts for the purchase and sale of grain (ADM contract nos. 02110A, 02111A and 02112A). ADM claimed total damages in the amount of \$467,742.07.

ADM requested the entry of a default judgment in the amount of \$467,742.07 against Omega. The default judgment was granted for the reasons set forth herein.

Acting upon ADM's complaint and the court order to compel arbitration, the NGFA prepared an arbitration services contract and submitted it to ADM for execution. By certified mail, the NGFA also sent Omega a letter dated July 2, 2004 that provided notice of these proceedings and copies of ADM's complaint, as well as the NGFA Trade Rules and Arbitration Rules. This mailing was delivered to Omega on July 6, 2004. Upon receipt of the duly executed arbitration services contract from ADM, the NGFA then sent it to Omega. Omega duly executed and returned the arbitration services contract to the NGFA on July 30, 2004. By the terms of the arbitration services contract, the parties agreed to comply with all NGFA rules and to abide by the arbitration decision reached in this case.

Following timely receipt of ADM's first argument on Sept.

16, 2004, the NGFA sent notice by certified mail to Omega requesting its answer. On Sept. 27, Omega requested an extension of the time to file the required response. ADM consented to Omega's request and the NGFA granted an extension to Omega. On Oct. 7, the NGFA received notice from Omega's counsel that Omega had filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Western District of Oklahoma. ADM agreed that this matter should be stayed, and the NGFA stayed the case pursuant to the filing of the bankruptcy petition by Omega.

On Feb. 4, 2005, the NGFA was advised that the court had dismissed Omega's bankruptcy status. On Feb. 7, Omega's counsel of record in these proceedings advised that it no longer represented Omega. On Feb. 9, the NGFA sent a notice to Omega requesting its now-overdue response to ADM's first argument. On Feb. 22, Omega requested an extension so that it could obtain new counsel. On April 27, the NGFA sent a notice by express mail to Omega reminding it that its response was overdue and requesting that Omega respond to the NGFA within 15 days. This mailing was returned to the NGFA as "unclaimed." On June 2, 2005, the NGFA sent by first-class mail yet another notice. This notice stated specifically that, "Pursuant to NGFA Arbitration Rules Section 7(i), Omega is consequently deemed to be in default. ***A default judgment will be issued against you, which the Plaintiff may enforce in a court of law.***" [Emphasis in original.]

The NGFA has yet to receive any further response from Omega, despite repeated attempts to contact Omega from April 2005 through the present date.

## **Default Judgment**

The NGFA has jurisdiction over this matter pursuant to the order of the court, the express terms of the contract between the parties, and the NGFA Arbitration Rules. Because of ADM's status as a NGFA active member and the language contained in the contract, the court determined that the parties were bound to arbitrate this matter.

ADM properly filed its complaint in compliance with NGFA Arbitration Rules Section 5(a). Pursuant to Arbitration Rules Section 5(b), the NGFA then submitted an arbitration services contract to the parties. ADM and Omega properly executed and returned the arbitration services contract, whereby they agreed to comply with the NGFA rules and to abide by the decision reached by the NGFA arbitrators in this case. However, Omega subsequently refused to comply with any further arbitration-related procedures and notices.

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

Notice to Omega requesting its answer was tendered on several occasions. Thus, it appears Omega made a conscious decision to disregard and to avoid its obligations under these arbitration proceedings. Therefore, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary determined that entry of default judgment against Omega 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:

Archer Daniels Midland Co. is awarded judgment against Omega Grain Co., LLC for \$467,742.07.

Dated: July 5, 2005

**National Grain and Feed Association**

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