



National Grain and Feed Association

# Arbitration Decision

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## ARBITRATION CASE NUMBER 2371

**Plaintiff:** North Star Grain International, LLC, Edina, Minn.

**Defendant:** Hyundai Syscomm Corporation, Palo Alto, Calif.

### FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, North Star Grain International, LLC (North Star), requested the entry of a default judgment in the amount of \$5,302,046.17 against the defendant, Hyundai Syscomm Corporation (Hyundai). The default judgment was granted for the reasons set forth below.

North Star submitted an arbitration complaint dated November 5, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Hyundai failed to fully perform on a supply agreement for the purchase of corn, soybeans, and dried distillers grains from North Star.

The supply agreement, which was signed by both Hyundai and North Star, contained the following provision:

**Arbitration.** Any dispute regarding this agreement shall be resolved by arbitration which will be the sole forum for resolution of any such disputes. Such proceedings shall be brought pursuant to and in accordance with the Arbitration Rules of the National Grain and Feed Association (the “**Arbitration Rules**”), and any arbitration hearing or other proceeding shall be conducted in the United States. The proceedings will be conducted in the English language. The parties agree to honor the rules stated in the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards respecting the enforcement of any arbitration award granted under this Section. [Emphasis in original].

Pursuant to the supply agreement, North Star sold to Hyundai various quantities of corn (contract no. 10471), soybeans (contract no. 10724), and dried distillers grains (contract nos. 11095, 11106, and 11108). Each of these contracts further stated under “**SALES TERMS AND CONDITIONS**” that “*the Grain Trade Rules of the National Grain and Feed Association apply on Grain; and the Feed Trade Rules of the National Grain and Feed Association apply on mill feed and other commodities not specifically stated above.*” The contracts further specified the following:

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, or if the applicable trade association has no arbitration rules, then according to the rules of the American Arbitration Association.

Acting upon North Star's complaint, the NGFA prepared an arbitration services contract and submitted it to North Star for execution. By certified mail dated November 12, 2008, the NGFA also sent to Hyundai a letter providing notice of these proceedings with copies of North Star's complaint and the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Hyundai was signed for and received on November 17, 2008. By U.S. mail on November 17, 2008, the NGFA also sent to Hyundai the exhibit binder that North Star had submitted to accompany its complaint.

Upon receipt of the duly executed arbitration services contract from North Star, the NGFA then sent it with accompanying correspondence to Hyundai by certified mail on December 3, 2008. The certified mail return receipt confirmed that this mailing to Hyundai was signed for and received on December 8, 2008.

On December 30, 2008, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on January 5, 2009. The NGFA's letters of December 3 and December 30, 2008 to Hyundai 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 still not receiving any response from Hyundai, or any indication that a response was forthcoming, the NGFA sent yet another notice to Hyundai on January 16, 2009 by Federal Express delivery. This notice further specifically stated as follows:

NGFA Arbitration Rules 5(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 Hyundai on January 22, 2009.

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

<b>DEFAULT JUDGMENT</b>
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The NGFA established jurisdiction over this matter pursuant to the express terms of the agreements between the parties, as well as by way of North Star's status as a NGFA active member.

North Star 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. 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.*" North Star properly executed and returned the arbitration services

contract. Hyundai refused to comply with the NGFA Arbitration Rules, and refused to respond to any arbitration-related mailings.

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.

As it appears that Hyundai made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary finds that entry of default judgment against Hyundai Syscomm Corporation is proper and warranted.

Therefore, on February 6, 2009, the 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 judgment pursuant to Section 5(e).

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

1. North Star Grain International, LLC is awarded judgment against Hyundai Syscomm Corporation for \$5,302,046.17.
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.

Dated: February 6, 2009

**NATIONAL GRAIN AND FEED ASSOCIATION**

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