



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, Web Site: www.ngfa.org

December 3, 2009

Arbitration Case Number 2389

Plaintiff: US Commodities LLC, Minneapolis, Minn.

Defendant: Jim Polk, Storden, Minn.

Factual and Procedural Background

The plaintiff, US Commodities LLC (USC), requested the entry of a default judgment in the amount of \$22,150.00 against the defendant, Jim Polk (Polk). The default judgment was granted for the reasons set forth below.

On Feb. 15, 2005, USC and Polk entered into a Managed Grain Program Agreement, signed by both USC and Polk, whereby Polk specifically agreed to sell and USC agreed to buy certain quantities of grain.

This Agreement contained the following clause:

“NGFA ARBITRATION OF DISPUTES: The parties to this contract agree that the sole remedy for resolution of any and all disagreements or disputes arising under 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 shall be final and binding upon the Buyer and Seller. Judgment upon the arbitration award may be entered and enforced in any court having jurisdiction thereof. (Copies of the NGFA Arbitration Rules are available upon request; or by contacting the National Grain and Feed Association, 1201 New York Ave., N.W. Suite 830, Washington DC 20005.)”

The Agreement further included the following exact terms:

“3. NORTHSTAR COMMODITY TO PRICE: Seller hereby authorizes and directs Northstar Commodity to make the “futures” pricing decisions for

	Amount	Grain	Begin Pricing Date	End Pricing Date	Del Mo/Option Mo
ss 2736	20,000 bu	corn	2/15/05	9/1/06	Dec 06-1206

which Seller has agreed to sell and Buyer has agreed to buy as shown on the attached contract(s) and addendums hereto.”

Also relevant to this case were other documents related to and arising out of the transactions provided for in the Feb. 2005 Agreement, including a Purchase Contract, dated Feb. 17, 2005; two Confirmation of Pricing and/or Contract Amendments, dated Sept. 1, 2006 and Oct. 14, 2006; and a Managed Grain Purchase Contract, dated Jan. 12, 2008.

USC submitted an arbitration complaint Jan. 7, 2009, to the National Grain and Feed Association (NGFA). The complaint alleged that Polk failed to perform under the duly signed agreement.

Acting upon USC’s complaint, the NGFA prepared an arbitration services contract and submitted it to USC for execution. By certified mail dated Feb. 9, 2009, the NGFA also sent to Polk a letter providing notice of these proceedings with copies of USC’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Polk was signed for and received on Feb. 14, 2009.

Upon receipt of the duly executed arbitration services contract from USC, the NGFA then sent it with accompanying correspondence to Polk by certified mail on Feb. 24, 2009. The certified mail return receipt confirmed that this mailing to Polk was signed for and received on Feb. 28, 2009.

In the interim, on Feb. 25, 2009, Polk contacted the NGFA by telephone with questions about the arbitration process. During this conversation, he indicated that he intended to respond once he received the arbitration services contract.

On April 20, 2009, the NGFA sent to Polk another letter by Federal Express delivery. Federal Express confirmed that this mailing was

delivered on April 22, 2009. The NGFA's letters of Feb. 24 and April 20, 2009 to Polk 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.

On April 30, 2009, Polk contacted the NGFA again with questions about the next step in the arbitration process. He

indicated that he would consult his attorney before responding further to NGFA's communications.

On May 1, 2009, the NGFA received a letter from Polk's counsel in which he indicated that Polk would not be submitting this dispute to arbitration. The NGFA has yet to hear further from Polk or his counsel.

Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of the Managed Grain Program Agreement and other contract documents, and by way of USC's status as a NGFA active member.

USC 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.*" USC properly executed and returned the arbitration services contract. Polk refused to comply with the NGFA Arbitration Rules, and refused to respond to any requests from the NGFA for the executed contract.

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 appeared that Polk made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary found that entry of default judgment against Polk was proper and warranted.

Therefore, on Nov. 12, 2009, 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).

The Award

THEREFORE, IT IS ORDERED THAT:

1. US Commodities LLC is awarded judgment against Jim Polk for \$22,150.
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: November 12, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

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