



National Grain and Feed Association

# Arbitration Decision

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March 26, 2012

## Arbitration Case Number 2576

**Plaintiff: The Andersons Inc., Maumee, Ohio**

**Defendant: Nathan Hake d/b/a Nathan Hake Farms, Eaton, Ohio**

### Factual and Procedural Background

The plaintiff, The Andersons Inc. (The Andersons), requested the entry of a default judgment in the amount of \$111,566.64 against the defendant, Nathan Hake d/b/a Nathan Hake Farms (Hake Farms). The default judgment was granted for the reasons set forth below.

The Andersons submitted an arbitration complaint dated July 22, 2011 to the National Grain and Feed Association (NGFA). The complaint alleged that Hake Farms failed to perform on duly signed Andersons contract nos. 59232, 249727, 255216, 255217, 255218, 255392, 255393, 255394, 259233, 259234, 259235 and 259236 for delivery of yellow shell corn.

Each of the contracts contained the following provision under "PURCHASE CONTRACT TERMS":

5. Both parties agree: (A) THIS CONTRACT IS MADE IN ACCORDANCE WITH THE APPLICABLE GRAIN TRADE RULES OF THE NATIONAL GRAIN AND FEED ASSOCIATION (A COPY WILL BE PROVIDED UPON REQUEST) EXCEPT AS MODIFIED HEREIN, AND THE PARTIES WILL BE BOUND THEREBY; AND (B) ANY DISPUTES OR CONTROVERSIES ARISING OUT OF THIS CONTRACT SHALL BE ARBITRATED BY THE NATIONAL GRAIN AND FEED ASSOCIATION, PURSUANT TO ITS 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. [Emphasis in original].

Acting upon The Andersons's complaint, NGFA prepared an arbitration services contract and submitted it to The Andersons for execution. By certified mail dated Aug. 8, 2011, NGFA also sent to Hake Farms a letter providing notice of these proceedings with copies of The Andersons' complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The U.S. Postal Service confirmed that this mailing to Hake Farms was signed for and received on Aug. 11, 2011.

Upon receipt of the duly executed arbitration services contract from The Andersons, NGFA then sent it with accompanying correspondence to Hake Farms by certified mail on Aug. 24, 2011. The U.S. Postal Service confirmed that this mailing to Hake Farms was signed for and received on Aug. 26, 2011.

On Sept. 30, 2011, NGFA sent to Hake Farms another letter by certified mail. The U.S. Postal Service confirmed that this mailing to Hake Farms was signed for and received on Oct. 3, 2011. NGFA's letters of Aug. 24 and Sept. 30 to Hake Farms 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 Hake Farms, or any indication that a response was forthcoming, NGFA sent yet another notice to Hake Farms on Oct. 28, 2011 by certified mail. 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.]*

The U.S. Postal Service confirmed that this mailing to Hake Farms was signed for and received on Oct. 31, 2011.

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

## Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of the contracts and by way of The Andersons' status as a NGFA active member.

The Andersons 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." The Andersons properly executed and returned the arbitration services contract. Hake Farms refused to comply with the NGFA Arbitration Rules, and refused to respond to any requests from 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 Hake Farms 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 Hake Farms was proper and warranted.

Therefore, on Feb. 1, 2012, 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. The Andersons Inc. is awarded judgment against Nathan Hake d/b/a Nathan Hake Farms for \$111,566.64.
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: February 1, 2012

**NATIONAL GRAIN AND FEED ASSOCIATION**

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