



National Grain and Feed Association

# Arbitration Decision

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July 12, 2012

## Arbitration Case Number 2611

**Plaintiff: MFA Incorporated d/b/a MFA Agri Services, Columbia, Mo.**

**Defendant: Kenneth Paul Lucas, Kennedyville, Md.**

### Factual and Procedural Background

The plaintiff, MFA Incorporated d/b/a MFA Agri Services (MFA), requested the entry of a default judgment in the amount of \$38,950 against the defendant, Kenneth Paul Lucas (Lucas). The default judgment was granted for the reasons set forth below.

MFA submitted an arbitration complaint dated Jan. 16, 2012 to the National Grain and Feed Association (NGFA). The complaint alleged that Lucas failed to perform on duly signed MFA contract nos. 31234 and 31242 for delivery of corn.

Each of the contracts stated, **“THIS CONTRACT CONTAINS ABINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.”** (Emphasis in original.) Each contract also contained the following provision under **“FURTHER CONTRACT TERMS AND CONDITIONS”**:

(11) Buyer and Seller agree that all controversies between them under this contract be settled by arbitration and that judgment may be entered upon any arbitration award in any court of competent jurisdiction. The arbitration shall be conducted in accordance with the rules and regulations of the National Grain and Feed Association pursuant to its grain arbitration rules.

Acting upon MFA’s complaint, NGFA prepared an arbitration services contract and submitted it to MFA for execution. By certified mail dated Jan. 27, 2012, NGFA also sent to Lucas a letter providing notice of these proceedings with copies of MFA’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Lucas was signed for and received on Jan. 31, 2012.

Upon receipt of the duly executed arbitration services contract from MFA, NGFA then sent it with accompanying correspondence to Lucas by certified mail on Feb. 15, 2012. The certified mail return receipt confirmed that this mailing to Lucas was signed for and received on Feb. 17, 2012.

On April 2, 2012, NGFA sent to Lucas another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on April 4, 2012. NGFA’s letters of February 15 and April 2, 2012 to Lucas 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 Lucas, or any indication that a response was forthcoming, NGFA sent yet another notice to Lucas on May 10, 2012 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 Lucas on May 14, 2012.

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

## Default Judgment

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

MFA 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." MFA properly executed and returned the arbitration services contract. Lucas 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 Lucas 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 Lucas was proper and warranted.

Therefore, on June 15, 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 pursuant to Section 5(e).

## The Award

**THEREFORE, IT IS ORDERED THAT:**

1. MFA Incorporated d/b/a MFA Agri Services is awarded judgment against Kenneth Paul Lucas for \$38,950.
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: June 15, 2012

**NATIONAL GRAIN AND FEED ASSOCIATION**

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