



National Grain and Feed Association

# Arbitration Decision

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January 24, 2013

## Arbitration Case Number 2641

**Plaintiff: Big River Resources LLC, West Burlington, Iowa**

**Defendant: RKC Farm Management Inc., Jacksonville, Fla.**

### Factual and Procedural Background

The plaintiff, Big River Resources LLC (Big River), requested the entry of a default judgment in the amount of \$388,700 against the defendant, RKC Farm Management (RKC). The default judgment is granted for the reasons set forth below.

On Aug. 20, 2012, the District Court for Polk County, Iowa issued an order staying litigation in this matter so that this case would proceed to arbitration.

Big River submitted an arbitration complaint dated Aug. 28, 2012 to the National Grain and Feed Association (NGFA). The complaint alleged that RKC Farm Management failed to perform on duly signed Big River contract nos. WB0013697, WB0014582, WB0014888, WB0014889 and WB0014890 for delivery of corn.

Each of the contracts stated:

This will be governed by the rules of the national grain and feed association details as specified above are an accurate statement of the terms and conditions of agreement between the buyer and the seller. This contract includes the terms and conditions printed on the reverse side hereafter, which are hereby agreed to.

Each contract also contained the following provision under "TERMS AND CONDITIONS":

11. Governing Law. This Confirmation shall be governed by the rules of the National Grain & Feed Association unless otherwise provided herein, and to the extent not inconsistent with such rules, this Confirmation shall be governed by and construed in accordance with the laws of the State of Iowa,

including the Iowa Uniform Commercial Code, but without regard to provisions thereof relating to conflicts of law.

Acting upon Big River's complaint, NGFA prepared an arbitration services contract and submitted it to Big River for execution. By certified mail dated Aug. 31, 2012, NGFA also sent to RKC a letter providing notice of these proceedings with copies of Big River's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to RKC was signed for and received on Sept. 4, 2012.

By certified mail dated Sept. 4, 2012, NGFA also sent to RKC a second, revised letter providing notice of these proceedings. The certified mail return receipt confirmed that this mailing to RKC was signed for and received on Sept. 7, 2012.

Upon receipt of the duly executed arbitration services contract from Big River, NGFA then sent it with accompanying correspondence to RKC by certified mail on Sept. 12, 2012. The certified mail return receipt confirmed that this mailing to RKC was signed for and received on Sept. 17, 2012.

After still not receiving any response from RKC, or any indication that a response was forthcoming, NGFA sent yet another notice to RKC on Oct. 11, 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 order issued by the court in August 2012 and the circumstances of this case, we anticipate that the defendant may

be electing not to participate in these proceedings, and we must anticipate that you do not intend to respond. ***Please note that this is our last attempt to elicit a response from the defendant. A default judgment may be entered, which the Plaintiff may enforce in a court of law.*** [Emphasis in original.]

Federal Express confirmed that this mailing was delivered to RKC on Oct. 15, 2012.

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

## Default Judgment

The NGFA established jurisdiction over this matter pursuant to the district court's order, the express terms of the contracts and by way of Big River's status as a NGFA active member.

Big River 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." Big River properly executed and returned the arbitration services contract. RKC 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 appears that RKC 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 RKC is proper and warranted.

Therefore, on Nov. 26, 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. Big River Grain LLC is awarded judgment against RKC Farm Management Inc. for \$388,700.
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 26, 2012

**NATIONAL GRAIN AND FEED ASSOCIATION**

**By: Charles M. Delacruz**

National Secretary