February 26, 2009

Arbitration Case Number 2366

Plaintiff: The Andersons Inc., Maumee, Ohio

Defendant: Fall Grain Inc., Danville Ill.

Factual and Procedural Background

The plaintiff, The Andersons Inc. (The Andersons), requested the entry of a default judgment in the amount of $3,557,500 against the defendant, Fall Grain Inc. (Fall Grain). The default judgment was granted for the reasons set forth below.

The Andersons submitted an arbitration complaint dated Oct. 24, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Fall Grain failed to perform on 56 separate contracts for a total of approximately 2.8 million bushels of yellow shell corn. Each of these 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. JUDGEMENT UPON THE ARBITRATION AWARD MAY BE ENTERED AND ENFORCED IN ANY COURT HAVING JURISDICTION THEROF." *[Emphasis added.]*

Acting upon The Andersons' complaint, the NGFA prepared an arbitration services contract and submitted it to The Andersons for execution. By certified mail dated Nov. 12, 2008, the NGFA also sent to Fall Grain 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 certified mail return receipt confirmed that this mailing to Fall Grain was signed for and received on Nov. 17, 2008.

Upon receipt of the duly executed arbitration services contract from The Andersons, the NGFA then sent it with accompanying correspondence to Fall Grain by certified mail on Nov. 24, 2008. The certified mail return receipt confirmed that this mailing to Fall Grain was signed for and received on Dec. 1, 2008.

On Jan. 8, 2009, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Jan. 12, 2009. The NGFA's letters of Nov. 24, 2008 and Jan. 8, 2009 to Fall Grain specifically provided notice that Sections 5(c) and (d) of the NGFA Arbitration Rules required that the signed contract be returned within 15 days.

After still not receiving any response from Fall Grain, or any indication that a response was forthcoming, the NGFA sent yet another notice to Fall Grain on Jan. 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 Fall Grain on Jan. 20, 2009.

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

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. Fall Grain 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 Fall Grain Inc. 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 Fall Grain Inc. is proper and warranted.

Therefore, on Jan. 30, 2009, the NGFA entered a default judgment against the defendant. The defendant also was 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 Fall Grain Inc. for $3,557,500.

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: January 30, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

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