



# National Grain and Feed Association Arbitration Decision

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December 26, 2013

## CASE NUMBER 2701

Plaintiff: Gavilon Grain LLC, Omaha, Neb.

Defendant: Terry Priebe, Ladoga, Ind.

### FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Gavilon Grain LLC (Gavilon), requested the entry of a default judgment in the amount of \$3,150 against the defendant, Terry Priebe (Priebe). The default judgment is granted for the reasons set forth below.

Gavilon submitted an arbitration complaint dated Aug. 15, 2013 to the National Grain and Feed Association (NGFA). The complaint alleged that Priebe failed to perform on duly signed Gavilon contract no. 0037994 for U.S. #1 yellow soybeans.

Under "ADDITIONAL TERMS AND CONDITIONS - PURCHASE CONTRACT CONFIRMATION" the contract stated as follows:

3. Unless otherwise provided herein, this Contract shall be subject to the National Grain and Feed Association (NGFA) Trade Rules, which Trade Rules are incorporated herein by reference. The parties agree that the sole forum for resolution of all disagreements or disputes between the parties arising under this Contract or relating to the formation of this Contract shall be arbitration proceedings before NGFA pursuant to NGFA Arbitration Rules. The decision and award determined by such arbitration shall be final and binding upon both parties and judgment upon the award may be entered in any court having jurisdiction thereof. Copies of the NGFA Trade and Arbitration Rules are available from Buyer upon request and are available at www.ngfa.org. This contract is governed by and is to be interpreted pursuant to the laws of the State of Missouri without taking into account its choice of law rules except that the NGFA Trade Rules supersede state law. Buyer hereby submits to and consents to the jurisdiction of the Courts for the State of Missouri and/or the federal courts for the District of Missouri except that the provisions concerning arbitration control over this provisions. In the event of a contradiction between the terms set forth in this Contract and the NGFA Trade Rules the terms set forth herein shall control. **The parties hereby waive trial by jury in any and all litigation related to or arising out of this contract or the transactions contemplated hereby.** [Emphasis in original].

Acting upon Gavilon's complaint, NGFA prepared an arbitration services contract and submitted it to Gavilon for execution. By certified mail dated Aug. 20, 2013, NGFA also sent to Priebe a letter providing notice of these proceedings with copies of Gavilon's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to Priebe was signed for and received on Aug. 26, 2013.

Upon receipt of the duly executed arbitration services contract from Gavilon, NGFA then sent it with accompanying correspondence to Priebe by certified mail on Sept. 6, 2013. The certified mail return receipt confirmed that this mailing to Priebe was signed for and received on Sept. 9, 2013.

On Sept. 26, 2013, NGFA sent to Priebe another letter by certified mail. The certified mail return receipt confirmed that this mailing was signed for and received on Sept. 30, 2013. NGFA's letters of Sept. 6 and Sept. 26, 2013 to Priebe 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 Priebe, or any indication that a response was forthcoming, NGFA sent a notice to Priebe on Oct. 30, 2013 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].

This last attempt by certified mail was rejected then delivered successfully by Federal Express Delivery. Federal Express confirmed that this mailing was delivered on Nov. 7, 2013.

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

## DEFAULT JUDGMENT

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

Gavilon 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." Gavilon properly executed and returned the arbitration services contract. Priebe 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 Priebe 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 Priebe is proper and warranted.

Therefore, on Nov. 26, 2013, 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. Gavilon Grain LLC is awarded judgment against Terry Priebe for \$3,150.
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 26, 2013

**NATIONAL GRAIN AND FEED ASSOCIATION**

By: Charles M. Delacruz  
National Secretary