



# National Grain and Feed Association Arbitration Decision

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January 21, 2022

## CASE NUMBER 2885

**PLAINTIFF: PARRISH & HEIMBECKER, LTD., WINNIPEG, MANITOBA, CANADA**

**DEFENDANT: DIESELROSS FARMS LTD., GRAND PRAIRIE, ALBERTA, CANADA**

### FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Parrish & Heimbecker, Ltd. (P&H) requested the entry of a default judgment in the amount of 89,674.38 CAD (converted by the plaintiff to equal 70,860 USD) against the defendant, Dieselross Farms Ltd. (Dieselross). The default judgment is granted for the reasons set forth below.

P&H submitted an arbitration complaint dated February 19, 2021, to the National Grain and Feed Association (NGFA). The complaint alleged that Dieselross failed to perform on contracts 250486 and 264254 for 1,044 metric tons of barley.

Both contracts were duly executed and agreed upon by both parties and stated “Rules: National Grain & Feed Assoc” The contracts also stated under paragraph 12 of the terms and conditions as follows:

This Contract shall be governed by the laws of the Province in which it was written and the laws of Canada as may be applicable therein except where an issue may be decided under the National Grain and Feed Association Grain Trade Rules. Any claim relating to this contract shall be settled by arbitration under the National Grain and Feed Association Arbitration Rules as are in effect at the date of this agreement. The parties agree to submit to arbitration. Judgement upon any arbitration award may be entered in any court or tribunal of competent jurisdiction. ...

Acting upon P&H’s complaint, NGFA prepared an arbitration services contract and submitted it to P&H for execution. By Federal Express dated March 26, 2021, NGFA also sent to Dieselross a letter providing notice of these proceedings with copies of P&H’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules.

Upon receipt of the duly executed arbitration services contract from P&H, NGFA then sent it with accompanying correspondence to Dieselross by Federal Express on April 9, 2021. Federal Express confirmed that this mailing to Dieselross was delivered on April 26, 2021

On April 23, 2021, NGFA sent to Dieselross another mailing, which included the March 26, 2021, notice of these proceedings, a copy of P&H’s complaint and attachments, and the NGFA Trade Rules and Arbitration rules. Federal Express confirmed that this mailing to Dieselross was signed for and received on April 29, 2021.

After still not receiving any response from Dieselross, or any indication that a response was forthcoming, NGFA sent yet another notice to Dieselross on September 23, 2021, by Federal Express. It contained a copy of the notice of these proceedings, the complaint submitted by P&H, the NGFA Trade Rules and Arbitration Rules booklet, and the partially executed arbitration services contract. This notice further specifically stated as follows:

NGFA Arbitration Rules 2(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. Unless we hear otherwise within the next 20 days, we will anticipate that you do not intend to respond and a default judgment may be entered against you, which the plaintiff may enforce in a court of law.

Federal Express confirmed that this mailing to Dieselross was signed for and received on September 29, 2021.

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

<b>DEFAULT JUDGMENT</b>
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NGFA established jurisdiction over this matter pursuant to the express terms of the contracts and by way of P&H's status as an NGFA active member.

P&H properly and in a timely manner filed its complaint under NGFA Arbitration Rule 2(A). Pursuant to Rule 2(B), NGFA then submitted an arbitration services contract to the parties. Rule 2(D) states that, "Each party must return the completed arbitration services contract within 15 days from the date the party receives it from the NGFA Secretary." P&H properly executed and returned the arbitration services contract. Dieselross refused to comply with the NGFA Arbitration Rules and refused to respond to any requests from NGFA for the executed contract.

NGFA Arbitration Rule 2(E) provides for the following:

Where a party fails to execute the arbitration services contract or pay the arbitration services fee, the NGFA Secretary may without further submissions by the parties enter a default judgment or such other relief as the NGFA Secretary deems appropriate.

As it appears that Dieselross made a conscious decision to disregard these arbitration proceedings, pursuant to Rule 2(E) of the NGFA Arbitration Rules, the NGFA Secretary finds that entry of default judgment against Dieselross is proper and warranted.

NGFA Arbitration Rule 2(E) also sets forth the requirements and conditions under which, "[a]ny party against whom a default judgment has been entered may apply to vacate the default judgment within 15 days of entry of the default judgment."

<b>THE AWARD</b>
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**THEREFORE, IT IS ORDERED THAT:**

1. Parrish & Heimbecker, Ltd. is awarded judgment against Dieselross Farms Ltd. for 89,674.38 CAD (converted by the plaintiff to equal 70,860 USD).
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 17, 2021\*

**NATIONAL GRAIN AND FEED ASSOCIATION**

By: Charles M. Delacruz  
NGFA Secretary

\* On November 17, 2021, NGFA entered the default judgment against the defendant. The defendant was advised regarding the procedures for applying to vacate the default judgment, but the defendant did not apply to vacate the default judgment.