



# National Grain and Feed Association Arbitration Decision

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June 30, 2023

## CASE NUMBER 2942

**PLAINTIFF: INDIGO AG, INC., MEMPHIS, TN**

**DEFENDANT: JET THORNTON FARMS, INC., BLACKSHEAR, GA**

### FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Indigo Ag, Inc. (Indigo), requested the entry of a default judgment in the amount of \$128,300 against the defendant, Jet Thornton Farms, Inc. (Jet Thornton Farms). The default judgment is granted for the reasons set forth below.

Indigo submitted an arbitration complaint dated November 9, 2021, to the National Grain and Feed Association (NGFA). The complaint alleged that Jet Thornton Farms failed to perform on multiple contracts for corn under a Marketplace Seller Agreement (MSA) between the parties.

The MSA was duly executed and agreed upon by both parties. The MSA also stated under the terms and conditions as follows:

**Dispute Resolution.** Dispute Resolution. Except as otherwise provided herein, the Agreement and any addendum, or transactions under the Agreement, the Indigo Marketplace Platform or through Indigo Marketplace will be subject to National Grain & Feed Association (“**NGFA**”) trade rules (the “**Rules**”) in effect on the date thereof, and any dispute will be referred to NGFA arbitration in accordance with the Rules. The parties agree that the sole forum for resolution of all disagreements or disputes relating to crop transactions arising under the Agreement, the Indigo Marketplace or the Indigo Marketplace Platform between You and Indigo shall be arbitration proceedings before the NGFA pursuant to the Rules. The decision and award determined by such arbitration shall be final and binding upon the parties and judgment upon the award may be entered in any court having jurisdiction thereof. ... [Emphasis in original]

Acting upon Indigo’s complaint, NGFA prepared an arbitration services contract and submitted it to Indigo for execution. By Federal Express dated November 18, 2021, NGFA also sent to Jet Thornton Farms a letter providing notice of these proceedings with copies of Indigo’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. USPS confirmed that this mailing to Jet Thornton Farms was delivered on November 22, 2021.

Upon receipt of the duly executed arbitration services contract from Indigo, NGFA then sent it with accompanying correspondence to Jet Thornton Farms by Federal Express on December 16, 2021. Federal Express confirmed that this mailing to Jet Thornton Farms was delivered on December 20, 2021.

On February 3, 2022, NGFA sent to Jet Thornton Farms another letter by Federal Express. Federal Express confirmed this mailing was delivered on February 7, 2022. NGFA's letters of December 16, 2021, and February 3, 2022, to Jet Thornton Farms specifically provided notice that Rule 2(E) of the NGFA Arbitration Rules required that the signed contract be returned within fifteen (15) days.

After not receiving any further response from Jet Thornton Farms or any indication that such a response was forthcoming, NGFA sent yet another notice to Jet Thornton Farms on April 5, 2022, by Federal Express. 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. 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 Jet Thornton Farms on April 11, 2022.

Jet Thornton Farms contacted NGFA by telephone on May 6, 2022, inquiring about the arbitration process and to provide a different address than the one previously provided to NGFA.

As a courtesy, on May 20, 2022, NGFA resent all the previous correspondence in the case to the alternative address provided by Jet Thornton Farms. Federal Express confirmed that this mailing to Jet Thornton Farms was delivered on May 24, 2022.

Jet Thornton Farms contacted NGFA by telephone again on June 24, 2022, with further questions about the arbitration process. NGFA indicated to Jet Thornton Farms that the case would proceed under the rules, including issuance of a default judgment, unless Jet Thornton Farms responded with an executed arbitration services contract.

NGFA has yet to receive an executed arbitration services contract from Jet Thornton Farms, despite the various communications and repeated attempts by NGFA.

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

Indigo 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." Indigo properly executed and returned the arbitration services contract. Jet Thornton Farms refused to comply with the NGFA Arbitration Rules and refused to participate in the NGFA arbitration process.

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 Jet Thornton Farms 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 Jet Thornton Farms 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. Indigo Ag, Inc. is awarded judgment against Jet Thornton Farms, Inc. for \$128,300.
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: January 26, 2023\*

**NATIONAL GRAIN AND FEED ASSOCIATION**

By: Charles M. Delacruz  
NGFA Secretary

\* On January 26, 2023, 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.