

**IN THE MATTER OF THE AUSTRALIAN GRAIN INDUSTRY  
CODE OF PRACTICE AND IN THE MATTER OF A COMPLAINT  
UNDER TECHNICAL GUIDELINE DOCUMENT No. 4 – OPERATING  
STANDARDS FOR POOL PROVIDERS**

**GTA Code Complaint No.3**

**LC WOOD t/a WOOD FARMING  
(First Complainant)**  
and  
**ND & ALP BAUM FAMILY TRUST  
(Second Complainant)**  
and  
**UNIQUE GRAIN MANAGEMENT PTY LTD  
(Respondent)**

**Determination**

**A. Introduction**

1. This is a Determination in respect of 2 complaints made to the Complaints Officer of Grain Trade Australia Pty Ltd (**GTA**) conducted pursuant to *GTA's Complaints Handling Guidelines (Complaints Guidelines)* as part of the *Australian Grain Industry Code of Practice (Code)*.
2. There appears to be no dispute that at all relevant times the Respondent was a member of GTA, and operated a grain pool to which *GTA's Operating Standards for Pool Providers (Operating Standards)* applied.
3. This Tribunal has been constituted by the Board of GTA in accordance with the Complaints Guidelines and with jurisdiction to determine the complaints.
4. This Tribunal comprises:
  - (a) Mr Ole Houe, GTA Director and Chair of this Tribunal
  - (b) Mr Andrew Goyder, Chair of GTA
  - (c) Mr Michael Wood, GTA Director;
  - (d) Mr Geoff Farnsworth, GTA Director and Counsel.
5. Mr Pat O'Shannassy, GTA CEO and Complaints Officer acted as Secretariat for the Tribunal.
6. It is important to bear in mind that Tribunals constituted by GTA under the Complaints Guidelines do not have power to award compensatory damages. Aggrieved parties may elect to pursue complaints under the Complaints Guidelines when matters of conduct, or seek compensation through GTA arbitration, if that is available, or through the Courts where they are contractual or commercial matters. We understand that Mr O'Shannassy has explained this to the complainants in this matter.

7. The Complainants are both grain producers. The Respondent is a Grain Pool Operator. The principal of the Respondent is Mr Mark Thiele. Mr Thiele has been active in the grains industry for over 20 years.

## **B. The First Complaint**

8. The first complaint was received from Mr LC Wood, trading as Wood Farming (**First Complaint**). The First Complaint was communicated on 15 May 2020 and detailed submissions were then received on 27 July 2020.
9. The First Complaint alleges that in its management, operation and delivery of wheat and barley pools for the 18/19 marketing season, the Respondent did not have in place
  - (a) the appropriate skills
  - (b) payment systems
  - (c) risk systems and procedures
  - (d) governance and compliance protocols
  - (e) policies and resources.
10. The First Complaint contains substantial and detailed allegations against the Respondent. These were put to the Respondent on several occasions and the Respondent was invited and given ample opportunity to respond.
11. The First Complainant has also claimed substantial financial compensation.
12. The First Complainant was referred to the *Complaints Handling Guidelines*, by the Complaints Officer to note they should initially seek resolution of its complaint directly with the Respondent before lodging a formal complaint with GTA. It is understood they have done so and did not receive any/or a sufficient response from the Respondent.
13. During conversations with the GTA Complaints Officer on 25th November 2020, Mr Thiele, the principal of the Respondent advised that he was winding-up the operations of the Respondent and was likely not to renew GTA membership.
14. Despite being invited to do so, Mr Thiele has failed to produce any evidence that the Respondent was compliant with the Operating Standard in the 2018/2019 marketing seasons, or at all.
15. Nor has Mr Thiele produced any evidence to rebut or address the serious allegations made in the First Complaint.

## **C. The Second Complaint**

16. The Second Complaint was received by GTA from Anna Baum for and on behalf of the ND & ALP Baum Family Trust.
17. The Second Complainant was referred to the *Complaints Handling Guidelines*, by the Complaints Officer to note they should initially seek resolution of its complaint directly with the Respondent before lodging a formal complaint with GTA. It is understood they have done so and did not receive any/or sufficient response from the Respondent.
18. By letter dated 27 May 2020, the Second Complainant advised that, in the opinion of the Second Complainant, the Respondent had not met the base operating standards as set out in the Code and that a significant material adverse change has resulted as a consequence.

19. Among other issues, the Second Complainant, has claimed that to its knowledge there has not been an audit of the pool in question, as stipulated in Pool Operating Standards, nor has it received an audit report from UGM despite a request for such a report. Further the Second Complainant has stated it has not received a Pool Product Disclosure Guide (PPDG) from UGM, despite a request to UGM, nor has it been able to find a PPDG on the UGM website. It is noted the UGM website appears to have been shut down for some time and is not available.
20. The Complainant notes such an audit report should indicate whether the Respondent complied with the *Pool Operating Standards*, a PPDG and the Code.
21. Despite being invited to do so, Mr Thiele has failed to produce any evidence to rebut or address the serious allegations made in the Second Complaint.

#### **D. Findings**

22. This Tribunal has been tasked with adjudicating the complaints. The process is as set down in the Complaints Guidelines and we are satisfied that the Complainants have for their part complied with their obligations under the Complaints Guidelines.
23. While the Complaints are not proof of the allegations they contain, the Respondent has chosen not to dispute the allegations either specifically, or by producing evidence to demonstrate that it is generally compliant with the Operating Standards.
24. By virtue of the fact that the Complainants have elected to raise complaints with GTA, and which complaints are presented clearly and credibly, the Respondent has a case to answer.
25. The failure to answer that case, by production of evidence rebutting the complaints does not prove the allegations but it does amount to reprehensible disregard of the importance of the Operating Standards and Complaints Procedure.
26. The Operating Standards were put in place precisely to address situations such as have been raised in the Complaints.
27. The Australian grains industry is largely self-regulated, of which all participants should be immensely proud. To the extent that some trading activities and operations are perhaps higher-risk, GTA and the industry have attempted to deal with these through the Code of Conduct, Technical Guideline Documents, and Complaints Handling Procedure.
28. Grain pools in particular involve growers handing over a valuable asset to a Pool Operator, largely on trust, against the promise of payment at some future date. It should go without saying that Pool participants are entitled to know precisely how pools will be managed so that they can assess risk and performance, and to receive regular reports on the progress of the Pool, and in particular notice of any adverse turns of event that may impact the projected Pool return.
29. It is more likely than not that despite request, the Complainants were provided with none of this information, which is possibly as serious a breach of the Operating Standards as we can imagine.
30. Moreover, Respondent's conduct in dealing with the Complaints has compounded matters by demonstrating a disregard for GTA and its procedures.

#### **E. Determination**

31. For the reasons given above, we consider the Respondent's conduct, both in relation to the conduct complained of, and its interaction with GTA in dealing with the Complaints, is sufficiently

serious as to warrant cancellation of its membership of GTA. We recognise this is the first time a determination of such consequence to a Pool Operator and its reputation has been made.

32. As stated above, we cannot award financial compensation to the Complainants. We strongly encourage the Complainants to consider pursuing claims for financial compensation whether through GTA arbitration (if that option is available) or alternatively through the relevant courts.
33. Finally, considerable time and cost is incurred (willingly, and necessarily) by GTA in dealing with complaints such as these. When a complaint is upheld it is appropriate that these costs should be borne by the Respondent.
34. For the reasons above, our determination and recommendation to the GTA Board for its approval, is that;
  - (a) The Respondent's membership of GTA be cancelled;
  - (b) The Respondent pay GTA \$15,000 to cover the expenses of convening this Tribunal
  - (c) This determination be published by GTA to its members to ensure they are fully conscious that such conduct is not acceptable for standing as a GTA member and can result in sanctions under the Code and the *Complaints Handling Guidelines*.

**This Determination is published at Sydney, the 18 day of December 2020.**

Ole Houe, Tribunal Chair



Andrew Goyder, GTA Chair



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Michael Wood, GTA Director



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Geoff Farnsworth, GTA Director  
and Counsel

