



# National Grain and Feed Association

# Arbitration Decision

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September 15, 2008

## Arbitration Case Number 2226

**Plaintiff: Bunge North America Inc., St. Louis, Mo.**

**Defendant: Terry Dicus, Paragould, Ark.**

### Factual and Procedural Background

The plaintiff, Bunge North America Inc. (Bunge), requested the entry of a default judgment in the amount of \$11,460 against the defendant, Terry Dicus (Mr. Dicus). The default judgment was granted for the reasons set forth below.

Bunge submitted an arbitration complaint dated March 11, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Mr. Dicus failed to perform on duly signed Bunge contract no. 97084 for delivery of yellow soybeans.

The contract stated that it was, "SUBJECT TO RULES OF: NATIONAL GRAIN AND FEED ASSOCIATION." (Emphasis in original) The contract also contained the following provision under "GENERAL TERMS":

"The terms of this confirmation are subject in all respects to the rules and regulations of the exchange, board, or association designated above. If Seller is not a member of the said exchange, board or association, then the rules and regulations of the National Grain and Feed Association shall govern. Buyer and Seller agree that all disputes and controversies between them with respect to this confirmation shall be arbitrated according to said rules and regulation, and that judgment may be entered on the arbitration award in any court of competent jurisdiction."

Acting upon Bunge's complaint, the NGFA prepared an arbitration services contract and submitted it to Bunge for execution. By certified mail dated March 21, 2008, the NGFA also sent to Mr. Dicus a letter providing notice of these proceedings with copies of Bunge's complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. This certified mailing was returned unclaimed.

Upon receipt of the duly executed arbitration services contract

from Bunge, the NGFA then sent it with accompanying correspondence and a copy of the initial March 21, 2008 mailing to Mr. Dicus by FedEx mail on April 3, 2008. Federal Express confirmed that this mailing to Mr. Dicus was signed for and received on April 7, 2008.

On May 14, 2008, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on May 16, 2008. The NGFA's letters of April 3, 2008 and May 14, 2008 to Mr. Dicus 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 Mr. Dicus, or any indication that a response was forthcoming, the NGFA sent yet another notice to Mr. Dicus on June 17, 2008 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 Mr. Dicus on June 19, 2008.

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

## Default Judgment

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

Bunge 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." Bunge properly executed and returned the arbitration services contract. Mr. Dicus refused to comply with the NGFA Arbitration Rules, and refused to respond to any arbitration-related mailings.

NGFA Arbitration Rules 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 Terry Dicus 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 Terry Dicus is proper and warranted.

Therefore, on Aug. 6, 2008, the NGFA entered a default judgement against the defendant. The defendant was also advised that NGFA Arbitration Rules 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 judgement pursuant to Section 5(e).

## The Award

### THEREFORE, IT IS ORDERED THAT:

1. Bunge North America Inc. is awarded judgment against Terry Dicus for \$11,460.
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: Aug. 6, 2008

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz  
National Secretary