



National Grain and Feed Association

Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3922
Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: www.ngfa.org

June 17, 2010

Arbitration Case Number 2235

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

Defendant: Lawyer Wheeler, Jr., Clarksdale, Miss.

Factual and Procedural Background

The plaintiff, Bunge North America Inc. (Bunge), requested the entry of a default judgment in the amount of \$42,500 against the defendant, Lawyer Wheeler, Jr. (Mr. Wheeler). The default judgment was granted for the reasons set forth below.

Bunge submitted an arbitration complaint dated April 1, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Mr. Wheeler failed to perform on duly signed Bunge contracts nos. 48575 and 48863 for delivery of #1 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 April 23, 2008, the NGFA also sent to Mr. Wheeler 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. The certified mail

return receipt confirmed that this mailing to Mr. Wheeler was signed for and received on April 26, 2008.

Upon receipt of the duly executed arbitration services contract from Bunge, the NGFA then sent it with accompanying correspondence to Mr. Wheeler by certified mail on May 12, 2008. This mailing was returned unclaimed.

On June 17, 2008, the NGFA sent another letter along with a copy of the May 12, 2008 mailing by Federal Express delivery. Federal Express confirmed that this mailing was delivered on June 19, 2008. The NGFA's letters of May 12, 2008 and June 17, 2008 to Mr. Wheeler 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 Mr. Wheeler, or any indication that a response was forthcoming, the NGFA sent yet another notice to Mr. Wheeler on July 10, 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. Wheeler on July 14, 2008.

The NGFA had not received an executed arbitration services contract from Mr. Wheeler, despite the repeated attempts by NGFA to contact him. Accordingly, on Sept. 8, 2008, the NGFA issued a default judgment against Mr. Wheeler which stipulated 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.” On Sept. 18, 2008, Mr. Wheeler sent a letter to the NGFA summarizing the arguments that he would present to an arbitration committee and requesting that the default judgment be vacated on the grounds that he had not in fact received or read any of the NGFA’s prior notifications. The mailing also contained a check representing the arbitration services fee.

As Mr. Wheeler’s application to vacate the default judgment complied with NGFA Arbitration Rules Section 5(e), the NGFA granted his request. On Sept. 26, 2008, the NGFA sent Mr. Wheeler another copy of the arbitration services contract, which he signed and returned to the NGFA. The arbitration services contract provides that the parties agree to submit the controversy to arbitration by NGFA, including that the parties specifically “agree to comply with all NGFA Arbitration Rules.” The arbitration services contract also specifically states: “The parties agree that noncompliance with any NGFA Arbitration Rules may result in a default judgment.” [Emphasis added.]

Pursuant to the NGFA Arbitration Rules, on Oct. 30, 2008, NGFA sent a request to Bunge for its First Argument (with a courtesy copy to Mr. Wheeler). This notice reminded the

parties about the procedures contained in the Arbitration Rules for preparing their arguments, including that Bunge then had twenty (20) days from receipt of the notice to file its First Argument. Bunge filed its First Argument in a timely manner.

On Dec. 11, 2008, the NGFA sent to Mr. Wheeler by certified mail a copy of Bunge’s first argument along with correspondence providing Mr. Wheeler twenty days to submit his answer to Bunge’s first argument. The certified mail return receipt confirmed that this mailing was signed for and received on Dec. 15, 2008. However, the NGFA did not receive an answer from Mr. Wheeler or any indication that an answer was forthcoming.

Therefore, on March 10, 2009, the NGFA sent yet another letter to Mr. Wheeler, which confirmed that he had not submitted an answer, and advised him as follows:

Please be advised that NGFA has no authority to provide an extension retroactively after the deadline for the filing of an argument has passed. NGFA may, however, consider a request with the mutual consent of all the parties to permit a late filing. Also, please be reminded that a default judgment may be entered against a party that fails to comply with the time specifications set forth in the NGFA Arbitration Rules.

The certified mail return receipt confirmed that this mailing was signed for and received on March 20, 2009.

The NGFA has yet to hear further from Mr. Wheeler, despite the attempts to contact him.

Default Judgment

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

Both Bunge and Wheeler properly executed and returned the arbitration services contract, thus agreeing to comply with all NGFA arbitration procedures. Bunge properly and in a timely manner filed its First Argument under NGFA Arbitration Rules Section 7(b).

NGFA Arbitration Rule Section 7(i) provides for the following:

In addition to default judgments issued pursuant to Section 5(d), where a party has failed to file arbitration papers in accordance with the time limits specified in this Section or by the National Secretary, the delinquent party shall be deemed to be in default, except there is no obligation to file a rebuttal or surrebuttal.

As it appeared that Mr. Wheeler made a conscious decision to disregard these arbitration proceedings, pursuant to Section 7(d) of the NGFA Arbitration Rules, the National Secretary found that entry of default judgment against Mr. Wheeler was proper and warranted.

The Award

THEREFORE, IT IS ORDERED THAT:

1. Bunge North America Inc. is awarded judgment against Lawyer Wheeler, Jr. for \$42,500.
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: July 20, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary