



National Grain and Feed Association

# Arbitration Decision

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June 17, 2010

## Arbitration Case Number 2236

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

**Defendant: Dr. Harold Wheeler, Greenwood, Miss.**

### Factual and Procedural Background

The plaintiff, Bunge North America Inc. (Bunge), requested the entry of a default judgment in the amount of \$66,250 against the defendant, Dr. Harold Wheeler (Dr. Wheeler). The default judgment is 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 Dr. Wheeler failed to perform on duly signed Bunge contract nos. 48576 and 48862 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 Dr. 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 Dr. Wheeler was signed for and received on April 29, 2008.

Upon receipt of the duly executed arbitration services contract from Bunge, the NGFA then sent it with accompanying correspondence to Dr. Wheeler by certified mail on May 12, 2008. The certified mail return receipt confirmed that this mailing to Dr. Wheeler was signed for and received on May 15, 2008.

On June 17, 2008, the NGFA sent another letter 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 Dr. 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 Dr. Wheeler, or any indication that a response was forthcoming, the NGFA sent yet another notice to 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 Dr. Wheeler on July 14, 2008.

The NGFA had not received an executed arbitration services contract from Dr. Wheeler, despite the repeated attempts by NGFA to contact him. Accordingly, on Sept. 8, 2008, the NGFA issued a default judgment against Dr. 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, Dr. 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 Dr. 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 Dr. 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 Dr. 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 Dr. Wheeler by certified mail a copy of Bunge’s first argument along with correspondence providing Dr. Wheeler twenty days to submit his answer to Bunge’s first argument. This mailing was returned to NGFA unclaimed, and resent to Dr. Wheeler by Federal Express delivery on March 10, 2009. Federal Express confirmed that this mailing was delivered to Dr. Wheeler on March 12, 2009. However, the NGFA did not receive an answer from Dr. Wheeler or any indication that an answer was forthcoming.

Therefore, on May 15, 2009, the NGFA sent yet another letter to Dr. Wheeler by Federal Express delivery, 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.

Federal Express confirmed that this mailing was delivered on May 19, 2009.

The NGFA has yet to hear further from Dr. 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 Dr. 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 Dr. 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 Dr. Harold Wheeler for \$66,250.
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