

National Grain and Feed Association

Arbitration Decision

1250 Eye St., N.W., Suite 1003, Washington, D.C. 20005-3917

Phone: (202) 289-0873, FAX: (202) 289-5388, E-Mail: ngfa@ngfa.org, Web Site: <http://www.ngfa.org>

ARBITRATION CASE NUMBER 2212

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

Defendant: Clark Farms II, Kiowa, Kans.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Bunge North America, Inc. (Bunge), requested the entry of a default judgment in the amount of \$36,300.00 against the defendant, Clark Farms II (Clark). The default judgment is granted for the reasons set forth below.

Bunge submitted an arbitration complaint on February 12, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Clark failed to perform on signed Bunge contract No. 45442 for delivery of 40,000 bushels of soft red winter wheat.

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.

After repeated attempts to contact Clark, on June 13, 2008, NGFA issued a default judgment in this case against Kevin Clark d/b/a Clark Farms II (copy of June 13, 2008 default judgment attached hereto). Subsequently, Bunge submitted a request to NGFA, dated August 21, 2008, that the case be reopened to specifically give notice to all of the partners of Clark Farms II—Kevin & Glenna, LLC, Kevin & Donald, LLC, and Darrell Clark Farms, LLC—through their registered agent.

Acting upon Bunge’s request, the NGFA prepared an updated arbitration services contract and submitted it to Bunge for execution. By certified mail dated September 19, 2008, the NGFA also sent a letter to Clark’s registered agent providing notice that the case was being reopened along with a copy of Bunge’s letter and 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 September 19, 2008 mailing to Clark's registered agent by FedEx mail on November 12, 2008. This letter to Clark 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. Federal Express confirmed that this mailing was signed for and received on November 14, 2008.

On November 17, 2008, Kevin Clark contacted NGFA by telephone, confirming receipt of the November 12 mailing, and requesting that future correspondence be directed to him rather than to his registered agent. He also requested contact information for Bunge's counsel.

After still not receiving an appropriate response from Clark, or any indication that a response was forthcoming, the NGFA sent another notice to Clark on January 9, 2009 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 Clark on January 13, 2009.

On January 16, 2009, Clark again contacted NGFA by telephone, requesting contact information for Bunge's counsel again. However, NGFA has yet to receive an executed arbitration services contract from Clark Farms II, despite repeated attempts by NGFA to contact it.

DEFAULT JUDGMENT

The NGFA established jurisdiction over this matter pursuant to the express terms of the contract 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. Clark refused to comply with the NGFA Arbitration Rules, and refused to properly respond to any arbitration-related mailings.

NGFA Arbitration Rule 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 Clark 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 Clark Farms II is proper and warranted.

NGFA Arbitration Rule Section 5(e) also 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.”

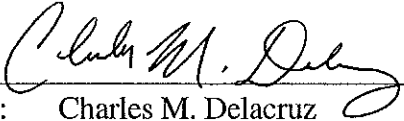
THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. Bunge North America, Inc. is awarded judgment against Clark Farms II for \$36,300.00.
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: March 24, 2009

NATIONAL GRAIN AND FEED ASSOCIATION


By: Charles M. Delacruz
National Secretary