



National Grain and Feed Association

Arbitration Decision

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March 26, 2009

Arbitration Case Number 2246

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

Defendant: Keith Harris, Bartlett, Tenn.

Factual and Procedural Background

The plaintiff, Bunge North America Inc. (Bunge), requested the entry of a default judgment in the amount of \$22,000 against the defendant, Keith Harris (Mr. Harris). The default judgment was granted for the reasons set forth below.

Bunge submitted an arbitration complaint dated April 14, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Mr. Harris failed to perform on duly signed Bunge contract number 111594 for delivery of No. 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 28, 2008, the NGFA also sent to Mr. Harris 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. Harris was signed for and received on May 5, 2008.

Upon receipt of the duly executed arbitration services contract from Bunge, the NGFA then sent it with accompanying correspondence to Mr. Harris by certified mail on May 12, 2008. The certified mail return receipt confirmed that this mailing to Mr. Harris was signed for and received on May 22, 2008.

On July 18, 2008, the NGFA sent another letter by certified mail. The NGFA's letters of May 12 and July 18, 2008 to Mr. Harris 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. The July 18 mailing was returned unclaimed. NGFA attempted again to communicate with Mr. Harris on Sept. 9, 2008 by Federal Express delivery. Federal Express was unable to make the delivery to the given address. NGFA then sent the notice to Mr. Harris on Sept. 24, 2008 by U.S. mail.

On Oct. 7, 2008, Mr. Harris contacted the NGFA, confirming receipt of the notices and stating that he had previously sent the executed arbitration services contract and fee to the NGFA. However, the NGFA could find no record of either the contract or the check in its files. Therefore, on Nov. 19, 2008, the NGFA wrote to Mr. Harris requesting that he check his records to verify whether he had, in fact, written such a check. This mailing was returned unclaimed. The NGFA re-sent this mailing to him on Jan. 8, 2009 by Federal Express delivery. Federal Express confirmed that it was delivered on Jan. 12, 2009.

The NGFA has yet to receive any further communication from Mr. Harris, despite repeated attempts to contact him.

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 an 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. Harris 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 Mr. Harris 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 a default judgment against him is proper and warranted.

Therefore, on Feb. 25, 2009, the NGFA entered a default judgment against the defendant. The defendant also was advised 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." In this case, the defendant did not apply to vacate the default judgment pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. Bunge North America Inc. is awarded judgment against Keith Harris for \$22,000.
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: February 25, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: **Charles M. Delacruz**
National Secretary