



National Grain and Feed Association Arbitration Decision

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June 30, 2023

CASE NUMBER 3094

PLAINTIFF: BUNGE NORTH AMERICA (EAST), L.L.C., MORRISTOWN, IN

DEFENDANT: ARTHUR CROP, LLC, GREENFIELD, IN

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Bunge North America (East), L.L.C. (hereinafter “Bunge”), requested the entry of a default judgment in the amount of \$193,243.30 against the defendant, Arthur Crop LLC (hereinafter “Arthur Crop”). The default judgment is granted for the reasons set forth below.

Bunge submitted an arbitration complaint dated November 18, 2022, to the National Grain and Feed Association (hereinafter “NGFA”). The complaint alleged that Arthur Crop failed to perform on multiple contracts for corn and soybeans.

The contracts were duly executed by both parties. The contracts stated “Trade Association: NGFA” and “THIS CONTRACT CONTAINS BINDING ARBITRATION PROVISIONS” (emphasis in original).

The contracts further stated under paragraph 13 of the “General Terms and Conditions” as follows:

Arbitration; Governing Law; Code of Conduct. Except as otherwise provided herein, this Contract incorporates by reference the rules of the Trade Association, as amended from time to time, specified on the face of this contract (if any), and to the extent not in conflict with this Contract or with said rules, to the Uniform Commercial Code. To the extent of any conflict or inconsistency between such rules and this Contract, this Contract shall prevail. Seller acknowledges the applicability of said rules and that a copy of said rules is available to Seller. Buyer and Seller agree that all disagreements, disputes and controversies of any nature whatsoever between them with respect to this Contract shall be arbitrated pursuant to the Trade Association’s Arbitration Rules, that the decision and award determined thereunder shall be final and binding on Buyer and Seller, and that judgment thereon may be entered and enforced by any court of competent jurisdiction. ...

Acting upon Bunge’s complaint, NGFA prepared an arbitration services contract and submitted it to Bunge for execution. By Federal Express dated December 15, 2022, NGFA also sent to Arthur Crop 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. Federal Express confirmed that this mailing to Arthur Crop was delivered on December 19, 2022.

Upon receipt of the duly executed arbitration services contract from Bunge, NGFA then sent it with accompanying correspondence to Arthur Crop by Federal Express on January 11, 2023. Federal Express confirmed that this mailing to Arthur Crop was delivered on January 17, 2023.

On February 24, 2023, NGFA sent to Arthur Crop another letter by Federal Express. Federal Express confirmed this mailing was delivered on February 28, 2023. NGFA's letters of January 11 and February 24, 2023, to Arthur Crop specifically provided notice that Rule 2(E) of the NGFA Arbitration Rules required that the signed contract be returned within fifteen (15) days.

After not receiving any response from Arthur Crop or any indication that a response was forthcoming, NGFA sent yet another notice to Arthur Crop on March 20, 2023, by Federal Express. This notice further specifically stated as follows:

NGFA Arbitration Rules 2(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 Arthur Crop on March 22, 2023.

NGFA has yet to receive an executed arbitration services contract from Arthur Crop, despite the repeated attempts by NGFA to contact Arthur Crop.

DEFAULT JUDGMENT

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 Rule 2(A). Pursuant to Rule 2(B), NGFA then submitted an arbitration services contract to the parties. Rule 2(D) states that, "Each party must return the completed arbitration services contract within 15 days from the date the party receives it from the NGFA Secretary." Bunge properly executed and returned the arbitration services contract. Arthur Crop refused to comply with the NGFA Arbitration Rules and refused to respond to any requests from NGFA for the executed contract.

NGFA Arbitration Rule 2(E) provides for the following:

Where a party fails to execute the arbitration services contract or pay the arbitration services fee, the NGFA Secretary may without further submissions by the parties enter a default judgment or such other relief as the NGFA Secretary deems appropriate.

As it appears that Arthur Crop made a conscious decision to disregard these arbitration proceedings, pursuant to Rule 2(E) of the NGFA Arbitration Rules, the NGFA Secretary finds that entry of default judgment against Arthur Crop is proper and warranted.

NGFA Arbitration Rule 2(E) also sets forth the requirements and conditions under which, "[a]ny party against whom a default judgment has been entered may apply to vacate the default judgment within 15 days of entry of the default judgment." Further, NGFA Arbitration Rule 7 provides that a default judgment issued by the NGFA Secretary shall be final unless properly and timely appealed by either party.

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. Bunge North America (East), L.L.C. is awarded judgment against Arthur Crop LLC for \$193,243.30
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: May 15, 2023*

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

* On May 15, 2023, NGFA entered the default judgment against the defendant. The defendant was advised regarding the procedures for applying to vacate the default judgment, but the defendant did not apply to vacate the default judgment.