



National Grain and Feed Association Arbitration Decision

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JUNE 18, 2009

CASE NUMBER 2330

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

Defendant: Jeff Loncorich, Dassel Minn.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Bunge North America, Inc. (Bunge), requested the entry of a default judgment in the amount of \$62,300.00 against the defendant, Jeff Loncorich (Mr. Loncorich). The default judgment is granted for the reasons set forth below.

Bunge submitted an arbitration complaint dated August 15, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Mr. Loncorich failed to perform on duly signed Bunge contract nos. 70347 and 70353 for delivery of #2 yellow corn.

Each contract contained the following provision under “GENERAL TERMS”:

Unless otherwise provided herein, the contract is subject to the rules and regulations of the Minneapolis Grain Exchange (or the National Grain and Feed Association if Seller is not a member of said exchange) in effect on the date of this contract, and to the extent not in conflict with this confirmation or with said rules and regulations, to the Uniform Commercial Code. Buyer and Seller agree that all disputes and controversies between them with respect to this contract shall be arbitrated according to said rules and regulations, that the decision and award determined thereunder shall be final and binding on Buyer and Seller, and that judgement thereon may be entered 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 September 16, 2008, the NGFA also sent to Mr. Loncorich 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. Loncorich was signed for and received on September 29, 2008.

Upon receipt of the duly executed arbitration services contract from Bunge, the NGFA then sent it with accompanying correspondence to Mr. Loncorich by certified mail on September 30, 2008. The certified mail return receipt confirmed that this mailing to Mr. Loncorich was signed for and received on October 9, 2008.

On October 14, 2008, the NGFA received a telephone call from Mr. Loncorich. In this conversation he stated that he would contact Bunge’s counsel to try to reach a settlement, as he did not dispute the fact that he owed Bunge the amount claimed.

After still not receiving an appropriate response to the arbitration complaint from Mr. Loncorich, or any indication that a response was forthcoming, the NGFA sent another notice to Mr. Loncorich on December 3, 2008 by Federal Express delivery. This notice 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. Loncorich on December 5, 2008.

The NGFA has yet to receive an executed arbitration services contract from Mr. Loncorich, despite the repeated attempts by NGFA to contact him.

DEFAULT JUDGMENT

The NGFA established jurisdiction over this matter pursuant to the express terms of the contracts 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. Mr. Loncorich refused to comply with the NGFA Arbitration Rules, and refused to adequately respond to the 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 Jeff Loncorich 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 Jeff Loncorich is proper and warranted.

Therefore, on May 20, 2009, NGFA entered a default judgment against the defendant. The defendant was also 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 pursuant to Section 5(e).

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. Bunge North America, Inc. is awarded judgment against Jeff Loncorich for \$62,300.00.
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: May 20, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary