



National Grain and Feed Association

Arbitration Decision

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October 7, 2010

Arbitration Case Number 2486

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

Defendant: Terry Svedja and Mary Ann Svedja, Individually, and
Central States Marketing Group, LLC, Blair, Neb.

Factual and Procedural Background

The plaintiff, Bunge North America Inc., requested the entry of a default judgment in the amount of \$22,675.00 against the defendants, Terry Svedja and Mary Ann Svedja, individually, and Central States Marketing Group, LLC. The default judgment was granted for the reasons set forth below.

The plaintiff submitted an arbitration complaint dated Nov. 11, 2009 to the National Grain and Feed Association (NGFA). The complaint alleged that defendants failed to perform on duly signed Bunge contract no. 146308 for delivery of soybeans.

The contract stated "TRADE ASSOCIATION: NGFA" (Emphasis in original) and contained the following provision:

1. Unless otherwise provided herein, this contract is subject to the rules and regulations of the trade association designated 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 of any nature whatsoever between them with respect to this contract, shall be arbitrated according to the rules of said association, that the decision and award determined thereunder shall be final and binding on Buyer and Seller, and that judgment thereon may be entered by any court of competent jurisdiction.

Acting upon the plaintiff's complaint, NGFA prepared an arbitration services contract and submitted it to the plaintiff for execution. By certified mail dated Dec. 16, 2009, NGFA also sent to the defendants a letter providing notice of these proceedings with copies of the plaintiff's complaint and

attachments, as well as the NGFA Trade Rules and Arbitration Rules. The certified mail return receipt confirmed that this mailing to the defendants was signed for and received on Dec. 22, 2009.

Upon receipt of the duly executed arbitration services contract from plaintiff, NGFA then sent it with accompanying correspondence to the defendants by certified mail on Jan. 7, 2010. This mailing was returned unclaimed, and resent to the defendants by Federal Express delivery on Feb. 2, 2010. Federal Express confirmed that this mailing was delivered on Feb. 9, 2010.

On March 19, 2010, NGFA sent to the defendants another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on March 24, 2010. NGFA's letters of February 2 and March 19, 2010 to the defendants 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 the defendants, or any indication that a response was forthcoming, NGFA sent yet another notice to the defendants on June 7, 2010 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 on original.]

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

Federal Express confirmed that this mailing was delivered to the defendants on June 9, 2010.

Default Judgment

NGFA established jurisdiction over this matter pursuant to the express terms of the contract and by way of the plaintiff's status as a NGFA active member.

The plaintiff 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." The plaintiff properly executed and returned the arbitration services contract. The defendants refused to comply with the NGFA Arbitration Rules, and refused to respond to any requests from NGFA for the executed contract.

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 appeared that the defendants made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary found that entry of default judgment against the defendants was proper and warranted.

Therefore, on Sept. 14, 2010, 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 judgment pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. Bunge North America Inc. is awarded judgment against Terry Svedja and Mary Ann Svedja, Individually, and Central States Marketing Group, LLC for \$22,675.
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: September 14, 2010

NATIONAL GRAIN AND FEED ASSOCIATION

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