



National Grain and Feed Association Arbitration Decision

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November 30, 2000

Arbitration Case No. 1840

Plaintiff: Bunge Corp., St. Louis, Mo.

Defendant: George Krutsinger, Unionville, Mo.

Factual and Procedural Background

Bunge Corp. (Bunge), the plaintiff, requested the entry of a default judgment in the amount of \$53,947.81 against George Krutsinger, the defendant.

The judgment was granted for the reasons set forth below.

Bunge filed its arbitration complaint in a letter dated June 18, 1997, which was received by the National Grain and Feed Association (NGFA) on June 19, 1997. The complaint alleged that George Krutsinger defaulted on 14 contracts¹ by failing to deliver a total of 106,257.84 bushels of corn and 2,000 bushels of soybeans to Bunge's elevator in LaGrange, Mo. Consequently, Bunge canceled the contracts as of the close of the market on Nov. 1, 1996 and demanded payment from Krutsinger in the amount of \$53,947.81 by the close of business on Nov. 14, 1996.

Bunge submitted copies of the contracts between the parties. Section 2 of the contract's "General Terms" stated:

"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."

Bunge Corp. was and is an active member of the NGFA in good standing and, as such, was justified in stipulating that disputes be resolved under the NGFA Arbitration System when entering into grain and feed contracts with another party.

Upon receipt of Bunge's arbitration complaint, the NGFA sent an NGFA contract for arbitration to the plaintiff for execution. The NGFA's records showed that defendant George Krutsinger was sent initial notice and a copy of Bunge's complaint on June 23, 1997 via certified mail.²

Bunge, as required by the NGFA Arbitration Rules, executed the contract for arbitration and returned the executed contract along with the arbitration service fee of \$800 to the NGFA, both of which were received on July 11, 1997.

The NGFA then sent the contract for arbitration to Krutsinger for execution on July 11, 1997.³ The NGFA's records indicated that the case was put on hold pending the outcome of Bunge's petition to compel arbitration that was filed in the Circuit Court of Putnam County, Missouri, on April 20, 1998. On Dec. 29, 1999, the court ordered Mr. Krutsinger to submit to the jurisdiction of the NGFA for arbitration of the dispute.

On Feb. 25, 2000, the NGFA sent to Mr. Krutsinger (via Certified Mail)⁴ a letter requesting execution of the contract for arbitration and payment of the arbitration service fee. The letter contained the following paragraph:

¹ Bunge contract numbers 63715, 63716, 63717, 132344, 132461, 132542, 132543, 132550, 132551, 132552, 132553, 132554, 133003 and 133004, with dates ranging from April 11, 1995 to Jan. 29, 1996.

² Certified Mail article number P 320 304 204.

³ Certified Mail article Z 338 919 909.

⁴ Certified Mail article number Z 597 313 542.

“FAILURE TO COMPLY WITH THE NGFA ARBITRATION RULES AND/OR FAILURE TO FILE ANY RESPONSIVE STATEMENT WITH THE NATIONAL SECRETARY MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU, WHICH THE PLAINTIFF MAY ENFORCE IN A COURT OF LAW. FAILURE TO RESPOND TO THIS NOTICE

AND PLAINTIFF’S CLAIM MAY AFFECT YOUR LEGAL RIGHTS.” [*Emphasis in original.*]

Nevertheless, Mr. Krutsinger failed to return an executed copy of the contract for arbitration or the required arbitration service fee.

The Decision

The defendant clearly received notice of the arbitration complaint filed against him and he did not respond. Thus, it appeared that the defendant made a conscious decision not to proceed with NGFA arbitration.

Bunge was a NGFA Active member in good standing at the time the contracts were executed. Section 3(a)(2) of the NGFA Arbitration Rules expressly provides, among other things, that: *“If the contract in dispute between a member and a nonmember provides for arbitration by the National Association or under its Arbitration Rules, the parties to the contract shall be deemed to have consented to arbitration under these Arbitration Rules.”* Section 3(c)(4) of the NGFA Arbitration Rules provides that:

“A general reference to NGFA rules shall be deemed to incorporate all rules of this Association, including the By-laws, Trade Rules and Arbitration Rules, and all definitions included in the Trade Rules shall apply under these Arbitration Rules, likewise.”

The language in the parties’ contracts, therefore, bound both parties to arbitrate this matter under the NGFA Arbitra-

tion Rules, even though the defendant is not a NGFA member.

There was no indication that the defendant intended to execute the contract for arbitration, pay the required arbitration service fee or otherwise comply with the NGFA Arbitration Rules. Section 5 of the NGFA Arbitration Rules requires a party to *“complete the contract for arbitration within fifteen (15) days from the date the party receives the contract from the National Secretary.”* The defendant clearly violated the time limits in the rules. Moreover, the defendant clearly received the NGFA’s notice.

Section 1 of the NGFA Arbitration Rules provides that the “National Secretary shall have the authority to make such decisions as are necessary to carry out these Rules.” Section 5(e) of the NGFA Arbitration Rules expressly authorizes the entry of default judgments where a party “fails to pay the arbitration service fee and/or fails to execute the contract for arbitration.”

The defendant in this case failed to comply with the NGFA Arbitration Rules. Thus, it was appropriate to enter the requested award in favor of the plaintiff, Bunge, and against the defendant, George Krutsinger.

The Award

Therefore, it is ordered that:

Bunge is awarded a judgment against George Krutsinger in the amount of \$53,947.81.

Dated: Oct. 10, 2000

National Grain and Feed Association

By: **Matthew W. Lisle**
National Secretary