



National Grain and Feed Association Arbitration Decision

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June 30, 2023

CASE NUMBER 3058

PLAINTIFF: BUNGE NORTH AMERICA, INC., LOUISIANA, MO

DEFENDANT: DALE DUNLAP, PERRY, MO

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Bunge North America, Inc. (Bunge), requested the entry of a default judgment in the amount of \$125,700 against the defendant, Dale Dunlap (Dunlap). The default judgment is granted for the reasons set forth below.

Bunge submitted an arbitration complaint dated August 16, 2022, to the National Grain and Feed Association (NGFA). The complaint alleged that Dunlap failed to perform on contracts 1000855967, 1000974773 and 1000974774 for 20,000 bushels of U.S. No. 1 yellow soybeans.

The contracts were duly executed by both parties and stated “TRADE ASSOCIATION: NGFA” and “THIS CONTRACT CONTAINS BINDING ARBITRAION PROVISIONS”. The contracts also stated under paragraph 13 of the 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 September 2, 2022, NGFA also sent to Dunlap 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 Dunlap was delivered on September 6, 2022.

Upon receipt of the duly executed arbitration services contract from Bunge, NGFA then sent it with accompanying correspondence to Dunlap by Federal Express on September 23, 2022. Federal Express confirmed that this mailing to Dunlap was delivered on September 28, 2022.

On October 28, 2022, NGFA sent to Dunlap another letter by Federal Express. Federal Express confirmed this mailing was delivered on October 31, 2022. NGFA's letters of September 23 and October 28, 2022, to Dunlap specifically provided notice that Rule 2(E) of the NGFA Arbitration Rules required that the signed contract be returned within fifteen (15) days.

After still not receiving any response from Dunlap or any indication that a response was forthcoming, NGFA sent yet another notice to Dunlap on November 25, 2022, 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 Dunlap on November 29, 2022.

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

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. Dunlap 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 Dunlap 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 Dunlap 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."

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. Bunge North America, Inc. is awarded judgment against Dale Dunlap for \$125,700.00
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: March 7, 2023*

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
NGFA Secretary

* On March 7, 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.