



National Grain and Feed Association

Arbitration Decision

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December 4, 2008

Arbitration Case Number 2290

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

Defendant: Cecil Burch Farms Partnership, Scott, Miss.

Factual and Procedural Background

The plaintiff, Bunge North America, Inc. (Bunge), requested the entry of a default judgment in the amount of \$210,200.00 against the defendant, Cecil Burch Farms Partnership (CBF). The default judgment was granted for the reasons set forth below.

Bunge submitted an arbitration complaint dated June 17, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that CBF failed to perform on Bunge contract nos. 48909, 48910, 48911, and 49175 for delivery of #2 yellow corn, #1 yellow soybeans, and #2 soft red winter wheat.

The contract stated that it was, "SUBJECT TO RULES OF: NATIONAL GRAIN AND FEED ASSOCIATION." (Emphasis in original). The contracts also contained the following provision under "GENERAL TERMS":

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, and that judgment may be entered on the arbitration award 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 June 24, 2008, the NGFA also sent to CBF 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 CBF was signed for and received on July 2, 2008.

Upon receipt of the duly executed arbitration services contract from Bunge, the NGFA then sent it with accompanying correspondence to CBF by certified mail on July 11, 2008. The certified mail return receipt confirmed that this mailing to CBF was signed for and received on July 29, 2008.

On July 24, 2008, the NGFA received a letter dated July 17, 2008 from Bob Serio, representing Cecil Burch Farms Partnership. In his letter, he stated the following:

Arbitration is not necessary in this case since I do not dispute that I owe Bunge North America, Inc. this \$210,200.00. Everything Heyl, Royster, Voelker & Allen [Bunge] told you in their letter is correct as far as the sequence of events and facts. I do owe Bunge North America, Inc. this \$210,200.00. The problem is I am financially insolvent and I am unable to pay any of this amount.

Based upon this acknowledgement from CBF, on September 18, 2008, the NGFA sent one final letter notifying CBF that a default judgement would be entered in this case. Federal Express confirmed that this mailing was received on September 22, 2008.

Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of 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. Based upon CBF's response to NGFA's communications, the Na-

tional Secretary finds that entry of default judgment against Cecil Burch Farms Partnership is proper and warranted.

Therefore, on October 23, 2008, the NGFA entered a default judgement against the defendant. The defendant was also advise 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 judgement pursuant to Section 5(e).

The Award

THEREFORE, IT IS ORDERED THAT:

1. Bunge North America, Inc. is awarded judgment against Cecil Burch Farms Partnership for \$210,200.00.
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.

Dated: October 23, 2008

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary