



National Grain and Feed Association

# Arbitration Decision

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August 27, 2009

## Arbitration Case Number 2301

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

**Defendant: Ashley Millican d/b/a Millican Planting Company, Sidon, Miss.**

### Factual and Procedural Background

The plaintiff, Bunge North America Inc. (Bunge), requested the entry of a default judgment in the amount of \$353,753.45 against the defendant, Millican Planting Company (Millican). The default judgment was granted for the reasons set forth below.

Bunge submitted an arbitration complaint dated June 19, 2008 to the National Grain and Feed Association (NGFA), which alleged that Millican failed to perform on contract nos. 48572, 48619, 48620, and 49240 for delivery of #1 yellow soybeans.

Acting upon Bunge's complaint, the NGFA prepared an arbitration services contract and submitted it to Bunge for execution. By certified mail dated July 9, 2008, the NGFA also sent to Millican 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. Upon receipt of the duly executed arbitration services contract from Bunge, the NGFA then sent it with accompanying correspondence and a copy of the initial July 9 mailing to Millican by Federal Express delivery on Aug. 1, 2008. On Sept. 4, 2008, the NGFA sent another letter to Millican by Federal Express delivery, reminding Millican that the arbitration services contract was overdue.

On Sept. 22, 2008, NGFA received the executed arbitration services contract from Millican. The arbitration services contract provides that the parties agree to submit the controversy to arbitration by NGFA, including that the parties specifically "*agree to comply with all NGFA Arbitration Rules.*" The arbitration services contract also specifically states: "*The parties agree that noncompliance with any NGFA Arbitration Rules may result in a default judgment.*" [Emphasis added.]

Pursuant to the NGFA Arbitration Rules, on Sept. 29, 2008, NGFA sent a request to Bunge for its First Argument (with a courtesy copy to Millican). This notice reminded the parties about the procedures

contained in the Arbitration Rules for preparing their arguments, including that Bunge then had twenty (20) days from receipt of the notice to file its First Argument. Bunge filed its First Argument in a timely manner.

On Oct. 10, 2008, Bunge submitted a request to the NGFA that the defendant be renamed as follows: "Ashley Millican d/b/a Millican Planting Company." On Oct. 15, 2008, the NGFA forwarded Bunge's request to Millican, instructing him to notify NGFA if he had any objection to the modification. This mailing was returned unclaimed, and resent to Millican on Nov. 21, 2008. The certified mail return receipt confirmed that this mailing was signed for and received on Dec. 2, 2008. No objection to the modification was submitted by the defendant.

On Nov. 3, 2008, NGFA forwarded a copy of Bunge's First Argument to Millican by Certified Mail, along with a request for Millican's Answer. This letter reminded Millican as follows:

"In accordance with Section 7(d) of the NGFA Arbitration Rules, the defendant shall have twenty (20) days from the date of receipt of the plaintiff's first argument in which to file an answer."

The certified mail return receipt confirmed that this mailing was signed for and received by Millican on Nov. 15. Millican did not submit an answer within the twenty-day timeframe provided, nor did he request an extension for filing his argument. NGFA Arbitration Rule 7(i) states as follows:

"The National Secretary may for good cause shown extend the time limits specified herein for a period no longer than twenty (20) days from the end of the specified time period. Requests for extension of time must be made prior to expiration of the specified time period." [Emphasis added.]

On Jan. 7, 2009, NGFA contacted Millican to inquire about the status of the missing filing. Millican confirmed to NGFA that in fact he had not filed an argument. Millican also expressed that he would follow up with NGFA if he subsequently decided to file an argument.

On March 13, 2009, after not hearing further from Millican, the NGFA sent another letter to Millican confirming that he had still not submitted an answer. The letter reminded Millican of the steps he

could still take if he was interested in filing an argument. The letter also went on to state that, "a default judgment may be entered against you at any time." This letter was returned unclaimed and resent by Federal Express delivery on April 23, 2009. Federal Express confirmed that this mailing was delivered on April 27, 2009.

The NGFA has not received further communication from Millican regarding the delinquent filing, despite the repeated attempts to contact him.

## Default Judgment

The NGFA established jurisdiction over this matter pursuant to the express terms of the contracts between the parties and the NGFA arbitration services contract.

Both Bunge and Millican properly executed and returned the arbitration services contract, thus agreeing to comply with all NGFA arbitration procedures. Bunge properly and in a timely manner filed its First Argument under NGFA Arbitration Rules Section 7(b).

NGFA Arbitration Rule Section 7(i) provides for the following:

"In addition to default judgments issued pursuant to Section 5(d), where a party has failed to file arbitration papers in accordance with the time limits specified in this Section or by the National Secretary, the delinquent party shall be deemed to be in default, except there is no

obligation to file a rebuttal or surrebuttal."

As it appears that Millican Planting Company made a conscious decision to disregard these arbitration proceedings, pursuant to Section 7(d) of the NGFA Arbitration Rules, the National Secretary finds that entry of default judgment against Millican Planting Company is proper and warranted.

Therefore, on July 20, 2009, the 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 Millican Planting Company for \$353,753.45.
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: July 20, 2009

**NATIONAL GRAIN AND FEED ASSOCIATION**

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