



National Grain and Feed Association Arbitration Decision

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1250 I (Eye) Street, N.W., Suite 1003
Washington, DC 20005-3922

P: (202) 289-0873
F: (202) 289-5388

April 23, 2009

CASE NUMBER 2322

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

Defendant: Ephron H. Lewis and Doris Lewis, Earle, Ark.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Bunge North America, Inc. (Bunge), requested the entry of a default judgment in the amount of \$23,603.92 against the defendants, Ephron H. Lewis and Doris Lewis (Lewis). The default judgment was granted for the reasons set forth below.

Bunge submitted an arbitration complaint dated July 14, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Lewis failed to perform on duly signed Bunge contract nos. 111789 and 111883 for delivery of #1 yellow soybeans.

Each contract stated that it was, “SUBJECT TO RULES OF: **NATIONAL GRAIN AND FEED ASSOCIATION.**” (Emphasis in original) Each contract 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 July 31, 2008, the NGFA also sent to Lewis 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 Lewis was signed for and received on August 4, 2008.

Upon receipt of the duly executed arbitration services contract from Bunge, the NGFA then sent it with accompanying correspondence to Lewis by certified mail on August 14, 2008. The certified mail return receipt confirmed that this mailing to Lewis was signed for and received on August 18, 2008.

The NGFA subsequently received letters from both Lewis’s attorney and Bunge, dated August 11 and August 14 respectively, stating that Lewis had filed a Chapter 12 bankruptcy case and requesting that the arbitration proceedings be stayed. The NGFA complied with this request.

On September 23, 2008, the NGFA received a letter from Bunge along with a copy of the court order dismissing Lewis’s bankruptcy case. Bunge therefore requested that the arbitration proceedings be reinitiated in this case. Acting upon Bunge’s request, the NGFA sent a letter to Lewis’s attorney requesting that the arbitration services contract be executed and returned with the arbitration service fee. On October 9, 2008, the NGFA received a response from Lewis’s attorney stating that, although he had represented them in their bankruptcy case, he was not representing them in these arbitration proceedings. Therefore, on November 10, 2008, the NGFA sent a letter directly to Lewis by certified mail requesting that the executed arbitration services contract and fee be returned within fifteen days. The certified mail return receipt confirmed that this mailing was signed for and received on November 13, 2008.

On January 8, 2009, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on January 12, 2009. The NGFA's letters of November 10, 2008 and January 8, 2009 to Lewis 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 Lewis, or any indication that a response was forthcoming, the NGFA sent yet another notice to Lewis on February 13, 2009 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 in original].

Federal Express confirmed that this mailing was delivered to Lewis on February 17, 2009.

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

DEFAULT JUDGMENT

The NGFA established jurisdiction over this matter pursuant to the express terms of the 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. Lewis refused to comply with the NGFA Arbitration Rules, and refused to respond to any arbitration-related mailings.

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 appears that Lewis made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary finds that entry of default judgment against Ephron H. Lewis and Doris Lewis is proper and warranted.

Therefore, on March 5, 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 Ephron H. Lewis and Doris Lewis for \$23,603.92.
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: March 5, 2009

NATIONAL GRAIN AND FEED ASSOCIATION

By: Charles M. Delacruz
National Secretary