



# National Grain and Feed Association Arbitration Decision

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APRIL 23, 2009

## CASE NUMBER 2343

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

**Defendant:** Jeffrey James, Wilson, Ark.

### FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Bunge North America, Inc. (Bunge), requested the entry of a default judgment in the amount of \$41,000.00 against the defendant, Jeffrey James (Mr. James). The default judgment was granted for the reasons set forth below.

Bunge submitted an arbitration complaint dated September 23, 2008 to the National Grain and Feed Association (NGFA). The complaint alleged that Mr. James failed to perform on duly signed Bunge contract no. 364 for delivery of 10,000 bushels of #2 soft red winter wheat.

The contract stated that it was, “**SUBJECT TO RULES OF: NATIONAL GRAIN AND FEED ASSOCIATION.**” [Emphasis in original]. The 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 September 29, 2008, the NGFA also sent to Mr. James 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. This certified mailing was returned unclaimed.

Upon receipt of the duly executed arbitration services contract from Bunge, the NGFA then sent it with accompanying correspondence to Mr. James by certified mail on October 8, 2008. The certified mail return receipt confirmed that this mailing to Mr. James was signed for and received on October 11, 2008.

On October 27, 2008, the initial mailing of September 29, 2008 was resent to Mr. James by US mail along with accompanying correspondence.

On November 13, 2008, the NGFA sent another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on November 17, 2008. The NGFA’s letters of October 8, 2008 and November 13, 2008 to Mr. James 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 Mr. James, or any indication that a response was forthcoming, the NGFA sent yet another notice to Mr. James on December 2, 2008 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 Mr. James on December 4, 2008.

The NGFA has yet to receive any response from Mr. James, despite the repeated attempts by NGFA to contact him.

## DEFAULT JUDGMENT

The NGFA established jurisdiction over this matter pursuant to the express terms of the contract 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. Mr. James 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 Jeffrey James 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 Jeffrey James is proper and warranted.

Therefore, on February 25, 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 Jeffrey James for \$41,000.00.
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: February 25, 2009

**NATIONAL GRAIN AND FEED ASSOCIATION**

By: Charles M. Delacruz  
National Secretary