



National Grain and Feed Association

# Arbitration Decision

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June 17, 2010

## Arbitration Case Number 2417

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

**Defendant: MDS Inc., Reynell, Ark.**

### Factual and Procedural Background

The plaintiff, Bunge North America Inc. (Bunge), requested the entry of a default judgment in the amount of \$130,500 against the defendant, MDS Inc. (MDS). The default judgment was granted for the reasons set forth below.

Bunge submitted an arbitration complaint dated Feb. 27, 2009 to the National Grain and Feed Association (NGFA). The complaint alleged that MDS failed to perform on duly signed Bunge contract no. 109633 for delivery of #2 soft red winter wheat.

The 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, NGFA prepared an arbitration services contract and submitted it to Bunge for execution. By certified mail dated March 23, 2009, NGFA also sent to MDS 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 MDS was signed for and received on March 30, 2009.

Upon receipt of the duly executed arbitration services contract from Bunge, NGFA then sent it with accompanying correspondence to MDS by certified mail on April 9, 2009. The certified mail return receipt confirmed that this mailing to MDS was signed for and received on April 15, 2009.

On May 15, 2009, NGFA sent to MDS another letter by certified mail. The certified mail return receipt confirmed that this mailing was signed for and received on May 27, 2009. NGFA's letters of April 9 and May 15, 2009 to MDS 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 MDS, or any indication that a response was forthcoming, NGFA sent yet another notice to MDS on June 15, 2009 by certified mail. 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.]

The certified mail return receipt confirmed that this mailing was signed for and received by MDS on June 30, 2009.

NGFA has yet to receive an executed arbitration services contract or any other communication from MDS, despite the repeated attempts by NGFA to contact MDS.

## Default Judgment

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. MDS refused to comply with the NGFA Arbitration Rules, and refused to respond to any requests from NGFA for the executed contract.

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 appeared that MDS made a conscious decision to disregard these arbitration proceedings, pursuant to Section 5(e) of the NGFA Arbitration Rules, the National Secretary found that entry of default judgment against MDS was proper and warranted.

Therefore, on May 26, 2010, 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 judgment pursuant to Section 5(e).

## The Award

### THEREFORE, IT IS ORDERED THAT:

1. Bunge North America Inc. is awarded judgment against MDS Inc. for \$130,500.
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: May 26, 2010

**NATIONAL GRAIN AND FEED ASSOCIATION**

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