



National Grain and Feed Association

Arbitration Decision

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May 17, 2012

Arbitration Case Number 2601

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

Defendant: Michael R. Rosenzweig and Malancy Rosenzweig d/b/a SWAG Inc., Monroe, La.

Factual and Procedural Background

The plaintiff, Bunge North America Inc. (Bunge), requested the entry of a default judgment in the amount of \$54,900 against the defendant, Michael R. Rosenzweig and Malancy Rosenzweig d/b/a SWAG Inc. (SWAG). The default judgment was granted for the reasons set forth below.

Bunge submitted an arbitration complaint dated Nov. 15, 2011 to the National Grain and Feed Association (NGFA). The complaint alleged that SWAG failed to perform on duly signed Bunge contract no. 200273348-000010 for delivery of #2 yellow sorghum.

The front of the contract stated “NGFA.” It also contained the following provision under “GENERAL TERMS AND CONDITIONS”:

13. Arbitration/Governing Law: This contract incorporates by reference the rules of the Trade Association, as amended from time to time, specified on the face of this contract, and to the extent not in conflict with this Contract or with said rules, to the Uniform Commercial Code. To the extent of any conflict or inconsistency between such rules and this Contract, this Contract shall prevail. Seller acknowledges the applicability of said rules and that a copy of said rules is available to Seller. Buyer and Seller agree that all disagreements, disputes and controversies of any nature whatsoever between them with respect to this Contract shall be arbitrated pursuant to the Trade Association’s Arbitration Rules, that the decision and award determined thereunder shall be final and binding upon Buyer and Seller, and that judgment thereon may be entered and enforced by any court of competent jurisdiction. If a matter at issue is not covered by the Trade Association’s rules or the Trade

Association’s Arbitration Rules, this Contract shall be governed by and construed in accordance with the laws of the state or province set forth in Buyer’s address on the face of the Contract.

Acting upon Bunge’s complaint, NGFA prepared an arbitration services contract and submitted it to Bunge for execution. By certified mail dated Nov. 23, 2011, NGFA also sent to SWAG 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 SWAG was signed for and received on Nov. 26, 2011.

Upon receipt of the duly executed arbitration services contract from Bunge, NGFA then sent it with accompanying correspondence to SWAG by certified mail on Dec. 19, 2011. The certified mail return receipt confirmed that this mailing to SWAG was signed for and received on Dec. 24, 2011.

On Jan. 4, 2012, SWAG contacted NGFA to discuss the arbitration process, and indicated that he would attempt to settle the case with Bunge.

On Feb. 13, 2012, NGFA sent to SWAG another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Feb. 15, 2012. NGFA’s letters of December 19, 2011 and Feb. 13, 2012 to SWAG 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 an appropriate response from SWAG, or any indication that a response was forthcoming, NGFA sent yet another notice to SWAG on April 2, 2012 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 SWAG on April 4, 2012.

On April 4, 2012, SWAG contacted NGFA by telephone. He indicated that he did not intend to sign the arbitration services contract.

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. SWAG refused to comply with the NGFA Arbitration Rules, and refused to properly 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 SWAG 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 SWAG was proper and warranted.

Therefore, on April 17, 2012, 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 Michael R. Rosenzweig and Malancy Rosenzweig d/b/a SWAG Inc. for \$54,900.
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: April 17, 2012

NATIONAL GRAIN AND FEED ASSOCIATION

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