



National Grain and Feed Association

# Arbitration Decision

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January 14, 2010

## Arbitration Case Number 2456

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

**Defendant: Terra Firma Land Company, L.L.C., Pace, Fla.**

### Factual and Procedural Background

The plaintiff, Bunge North America Inc. (Bunge), requested the entry of a default judgment in the amount of \$115,437.50 against the defendants, Terra Firma Land Company, L.L.C. (Terra Firma). The default judgment was granted for the reasons set forth below.

Bunge submitted an arbitration complaint dated June 29, 2009 to the National Grain and Feed Association (NGFA). The complaint alleged that Terra Firma failed to perform on duly signed Bunge contract nos. 49032, 49098, 49120, and 49655 for delivery of #2 soft red winter wheat.

Each of the contracts 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 July 2, 2009, NGFA also sent to Terra Firma 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 was signed for and received on July 6, 2009.

Upon receipt of the duly executed arbitration services contract

from Bunge, NGFA then sent it with accompanying correspondence to Terra Firma by certified mail on July 22, 2009. This mailing was returned unclaimed, and was resent with accompanying correspondence to Terra Firma by Federal Express delivery on Aug. 3, 2009. Federal Express confirmed that this mailing was delivered on Aug. 5, 2009.

On Sept. 24, 2009, the NGFA sent to Terra Firma another letter by Federal Express delivery. Federal Express confirmed that this mailing was delivered on Sept. 28, 2009. The NGFA's letters of July 22, Aug. 3, and Sept. 24, 2009 to Terra Firma 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 Terra Firma, or any indication that a response was forthcoming, the NGFA sent yet another notice to Terra Firma on Oct. 27, 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 Terra Firma on Oct. 29, 2009.

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

## 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. Terra Firma refused to comply with the NGFA Arbitration Rules, and refused to respond to any requests from the 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 Terra Firma 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 Terra Firma was proper and warranted.

Therefore, on Dec. 17, 2009, 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 Terra Firma Land Company, L.L.C. for \$115,437.50.
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: December 17, 2009

**NATIONAL GRAIN AND FEED ASSOCIATION**

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