



National Grain and Feed Association Arbitration Decision

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December 9, 2024

CASE NUMBER 3144

PLAINTIFF: BUNGE NORTH AMERICA INC., COUNCIL BLUFFS, IA

DEFENDANT: ROBERT GRAU, CORNING, IA

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, Bunge North America Inc., requested the entry of a default judgment in the amount of \$11,355.00, against the defendant, Robert Grau. The default judgment is granted for the reasons set forth below.

The plaintiff submitted an arbitration complaint dated November 20, 2023, to the National Grain and Feed Association (NGFA). The complaint alleged that the defendant failed to perform on contract numbers 1000988187 and 1000990062/1001057991 for soybeans.

The contracts were duly executed by the parties and stated “TRADE ASSOCIATION: NGFA” and “THIS CONTRACT CONTAINS BINDING ARBITRATION PROVISIONS” (emphasis in original).

The contracts further stated under paragraph 13 of the “General Terms and Conditions” as follows:

Arbitration; Governing Law; Code of Conduct. Except as otherwise provided herein, this Contract incorporates by reference the rules of the Trade Association, as amended from time to time, specified on the face of this Contract (if any), and to the extent not in conflict with this Contractor 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 on Buyer and Seller, and that judgement thereon may be entered and enforced by any court of competent jurisdiction. ...

Acting upon the plaintiff’s complaint, NGFA prepared an arbitration services contract and submitted it to the plaintiff for execution. By Federal Express (FedEx) dated December 1, 2023, NGFA also sent to the defendant a letter providing notice of these proceedings with copies of the plaintiff’s complaint and attachments, as well as the NGFA Trade Rules and Arbitration Rules. FedEx confirmed that this mailing to the defendant was delivered on December 4, 2023.

Upon receipt of the duly executed arbitration services contract from the plaintiff, NGFA then sent it with accompanying correspondence to the defendant by FedEx on January 12, 2024. FedEx confirmed that this mailing to the defendant was delivered on January 16, 2024.

On March 8, 2024, NGFA sent to the defendant another letter by FedEx. FedEx confirmed this mailing was delivered on March 13, 2024. NGFA’s letters of January 12, and March 8, 2024, to the defendant

provided notice that Rule 2(E) of the NGFA Arbitration Rules required that the signed arbitration services contract be returned within fifteen (15) days.

After not receiving any response from the defendant, NGFA sent another notice to the defendant on June 4, 2024, via FedEx. This notice stated as follows:

NGFA Arbitration Rules 2(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].

FedEx confirmed that this mailing was delivered to the defendant on June 7, 2024.

To date, NGFA has not received the signed arbitration services contract, nor the arbitration fee from the defendant.

DEFAULT JUDGMENT

NGFA established jurisdiction over this matter pursuant to the express terms of the contract and by way of the plaintiff's status as an NGFA active member.

The plaintiff filed its complaint in conformity with NGFA Arbitration Rule 2(A). Pursuant to Rule 2(B), NGFA then submitted an arbitration services contract to the parties. Rule 2(D) states that, "Each party must return the completed arbitration services contract within 15 days from the date the party receives it from the NGFA Secretary." The plaintiff executed and returned the arbitration services contract. The defendant elected to not comply with the NGFA Arbitration Rules.

NGFA Arbitration Rule 2(E) provides for the following:

Where a party fails to execute the arbitration services contract or pay the arbitration services fee, the NGFA Secretary may without further submissions by the parties enter a default judgment or such other relief as the NGFA Secretary deems appropriate.

Pursuant to Rule 2(E), NGFA finds that entry of default judgment against the defendant is warranted.

NGFA Arbitration Rule 2(E) also sets forth the requirements and conditions under which, "[a]ny party against whom a default judgment has been entered may apply to vacate the default judgment within 15 days of entry of the default judgment." Further, NGFA Arbitration Rule 7 provides that a default judgment issued by NGFA may be appealed under the rules by either party.

THE AWARD

THEREFORE, IT IS ORDERED THAT:

1. The plaintiff is awarded judgment against the defendant for \$11,355.00

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. 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: October 9, 2024*

NATIONAL GRAIN AND FEED ASSOCIATION

* On October 9, 2024, NGFA entered the default judgment against the defendant. The defendant was advised regarding the procedures for applying to vacate the default judgment, but the defendant did not apply to vacate the default judgment.