



# National Grain and Feed Association Arbitration Decision

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## CASE NUMBER 2598

Plaintiff: South Dakota Wheat Growers Association, Aberdeen, S.D.

Defendant: Robert Hattum, Harrold, S.D.

### STATEMENT OF THE CASE

This dispute involved three contracts for U.S. No. 2 yellow corn between the buyer, South Dakota Wheat Growers Association (SDWG), and the seller, Robert Hattum (Hattum).

Two of the three contracts in this dispute were “Cash Plus” contracts. SDWG described such contracts as follows:

SDWG would pay a producer a substantial up front premium if the producer would (1) agree to sell a certain number of bushels after signing the contract at an agreed futures price and (2) to sell an identical amount of grain the next year unless the then futures price was less than the original per bushel price. If the futures price was less than the initial per bushel price received by the grain producer, he would have no more obligation to SDWG.

SDWG stated that on Aug. 19, 2009, its representative met with Hattum and explained the Cash Plus program. The parties subsequently agreed to contract for 25,000 bushels of corn under the program (contract number MP00018). SDWG stated the parties then met and agreed on a second Cash Plus contract for an additional 25,000 bushels of corn under the program on June 8, 2010 (contract number CP00022). SDWG submitted a contract confirmation and an “Addendum to Cash Plus Contract” for each of the two contracts. Hattum signed both contract confirmations; Hattum did not sign the addendums.

According to SDWG, Hattum timely performed the first step under the Cash Plus contracts with initial deliveries of 25,000 bushels of corn under each contract. In return, Hattum received a 42-cent-per-bushel premium under contract number MP00018 and a 23-cent-per-bushel premium under contract number CP00022. SDWG argued that Hattum failed to deliver the second quantity of 25,000 bushels under either contract despite that the then futures prices had triggered his obligation to deliver additional bushels under the terms of the contracts.

The third contract in dispute between the parties was a “Target Price Agreement,” dated May 27, 2010, for the delivery of another 25,000 bushels of corn at \$3.50-per-bushel. On or about August 5, 2010, both parties signed a new agreement to extend the delivery period for this contract to October-November 2011 (contract number PC01436).

SDWG claimed that Hattum ultimately defaulted on all three of the contracts in dispute. SDWG stated that after Hattum failed to make the second deliveries under either of the Cash Plus contracts (contract numbers MP00018 and CP00022), SDWG cancelled those contracts, respectively, on Oct. 29 and Oct. 20, 2010. SDWG further stated that after Hattum failed to make any deliveries under contract PC01436, SDWG cancelled that contract on Dec. 1, 2011. SDWG claimed damages for the difference between the applicable contract and market prices, plus cancellation fees, of \$55,500 (\$2.22-per-bushel) under contract MP00018; \$59,750 (\$2.39-per-bushel) under contract CP00022; and \$59,500 (\$2.38-per-bushel) under contract PC01436. SDWG claimed total damages of \$174,750.

In response to SDWG's claims, Hattum stated that because he did not sign the addendums to the Cash Plus contracts they did not constitute a part the agreements between the parties. According to Hattum, he was consequently relieved of obligations beyond the initial deliveries under those contracts. Hattum also stated that at no time over an approximately 15-year trading relationship with SDWG had any single contract obligated him to sell corn over more than one season. He claimed that the Cash Plus contracts were not in keeping with the course of dealings between the parties. Hattum argued that SDWG "took advantage of the professional relationship between the parties" and "essentially tricked" him into signing the agreements. Hattum also filed a counterclaim for unspecified damages resulting from SDWG's alleged "fraud and deceit."

## THE DECISION

The arbitrators noted that this dispute between the parties focused upon the addendums to the Cash Plus contracts. After close consideration of the parties' submissions, the arbitrators concluded that these addendums were part of the Cash Plus contracts. The addendums were not amendments to the original contracts; they were an integral component of those agreements, which were signed and acted upon by the parties.

The arbitrators determined that NGFA Grain Trade Rule 3 [Confirmation of Contracts] applied to this dispute. Paragraph A of Rule 3 states that the parties to a grain contract shall send written notification to each other "setting forth the specifications as agreed upon." Paragraph A further states:

Upon receipt of said confirmation, the parties shall carefully check all specifications therein and, upon finding any differences, shall immediately notify the other party to the contract ...

Paragraph B of Rule 3 further provides:

If either the Buyer or the Seller fails to send a confirmation, the confirmation sent by the other party will be binding upon both parties, unless the confirming party has been immediately notified by the non-confirming party, as described in Rule 3(A), of any disagreement with the confirmation received.

The arbitrators noted that Hattum did not raise "any disagreement" with the contract confirmations or addendums until SDWG sought to obtain delivery of the outstanding bushels. Indeed, Hattum signed the contract confirmations.

Therefore, Hattum was obligated to deliver additional bushels under those contracts. The arbitrators determined that Hattum further confirmed the original Cash Plus contracts by partially performing upon them. He delivered the initial quantities of bushels in exchange for the premium price as provided by the contract addendums. Throughout the course of dealings between the parties, SDWG maintained contact with Hattum. On occasion, SDWG extended delivery periods under the contracts to accommodate Hattum. Upon confirming that Hattum would not be performing on the contracts, SDWG cancelled them and sent confirmation of the cancellations with chargeable costs to Hattum.

The arbitrators concluded that the contracts between SDWG and Hattum were valid. Hattum was obligated to perform under those contracts, and when Hattum failed to do so, SDWG properly cancelled those contracts. The arbitrators further determined that the evidence and documentation provided by Hattum failed to show "fraud" or "deceit" by SDWG to relieve Hattum of the obligations under the signed contracts.

## THE AWARD

The arbitrators consequently awarded judgment to SDWG in the amount of \$174,750. Interest shall accrue on the award at the rate of 3.25 percent pursuant to NGFA Arbitration Rule 8(m) from the date of this award until payment is made in full.

Submitted with the unanimous consent of the arbitrators, whose names appear below:

**William Doyscher**, *Chair*  
Assistant Manager  
Farmers Cooperative Elevator Co.  
Hanley Falls, MN

**Tom Hauschel**  
CEO and General Manager  
Heartland Co-op  
West Des Moines, IA

**John Skelley**  
President  
West Plains, LLC  
Kansas City, MO