



National Grain and Feed Association

# Arbitration Decision

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April 4, 2013

## Arbitration Case Number 2584

**Plaintiff:** Dakota Plains Ag Center LLC, Parkston, S.D.

**Defendant:** James Mettler, Menno, S.D.

### Statement of the Case

This case concerned two contracts entered into between the buyer, Dakota Plains Ag Center LLC (Dakota Plains), and the seller, James Mettler (Mettler), for delivery of a total of 50,000 bushels of corn to Dakota Plains' facilities. Both contracts clearly stated, "NGFA RULES TO GOVERN;" therefore, NGFA is deemed to have arbitration authority in this case.

The first contract, numbered 33357, issued on Sept. 17, 2010, was a priced contract for delivery of 30,000 bushels at a cash price of \$4.33 per bushel, with a delivery period of Oct. 1, 2010 through Nov. 30, 2010. Despite the mailing of the original contract and repeated additional attempts by Dakota Plains to obtain Mettler's signature on the contract, Mettler did not sign this contract. Mettler denied the validity of contract number 33357 based upon the lack of his signature on the contract.

The second contract, numbered 33576, issued on Sept. 27, 2010, was a futures only contract for the delivery of 25,000 bushels. The futures price component of this contract was set at \$5.42 per bushel with a delivery period of May 1, 2011 through June 30, 2011. Mettler signed this contract on Oct. 28, 2010.

On Oct. 28, 2010, Mettler delivered one load of corn and this shipment was applied to contract number 33357. Dakota Plains offered a delivery sheet dated December 9, 2011, as both evidence of payment on this load (which Mettler did not deny receiving) and as further evidence of Mettler's knowledge of, and the validity of, the contract. Mettler acknowledged that he made no further deliveries against this contract claiming Dakota Plains defaulted on the contract by way of its inability to receive shipments in a timely manner.

In support of his claim, Mettler offered an affidavit from his truck driver. In the affidavit, the driver stated: "On October 28, 2010, I hauled a load of corn to Dakota Plains elevator for James Mettler. On that day I was told by an employee of Dakota Plains to not come back, which I understood to mean that day or the next day." The driver further stated that "delivering grain to Dakota Plains had always involved long waits, sometimes as long as 4 hours." Dakota Plains disputed this claim and offered evidence of grain receipts at its facility on the day the driver stated he attempted to deliver and the days that immediately followed.

### The Decision

The arbitrators concluded that Mettler defaulted on contract number 33357 and failed to provide adequate proof that Dakota Plains prevented him from delivering on this contract. Contract 33357 was deemed to be a valid contract pursuant to the terms of NGFA Grain Trade Rule 3(B), which states:

If either the Buyer or 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.

Mettler did not claim that he immediately objected to the confirmation issued by Dakota Plains; therefore, contract 33357 was a valid and existing contract. Contract 33576 was signed by both parties; therefore, the validity of this contract was not in dispute.

After several attempts to contact Mettler and his attorney regarding settlement on Mettler's non-performance on contract number 33357, Dakota Plains sent a notice of default on both contracts to Mettler providing him until July 8, 2011 to respond. After receiving no response from Mettler, Dakota Plains relied upon the July 6, 2011 closing futures as the buy-in price on the contracts.

In his arguments, Mettler stated that if he was determined to be in default under contract number 33357, the buy-in price should be as of Dec. 8, 2010 (or one week after the last day of the original delivery period). The arbitrators concluded this argument was without merit referring to NGFA Grain Trade Rule 28(A) [Seller's Non-Performance], which states:

*If the Seller finds that he will not be able to complete a contract within the contract specifications, it shall be his duty at once to give notice of such fact to the Buyer by telephone confirmed by subsequent written communication.*

The arbitrators noted that Mettler made no such communication. NGFA Grain Trade Rule 28 (A) further states:

*If the Seller fails to notify the Buyer of his inability to complete his contract, as provided above, the liability of the Seller shall continue until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted.*

The arbitrators determined that Dakota Plains proceeded with due diligence until such time as it was determined that Mettler had no intention of completing delivery on contract number 33357 or making any deliveries under contract number 33576. The arbitrators also concluded that Dakota Plains appropriately chose July 6, 2011 as a pricing date.

## The Award

Contract 33357 was a priced contract with a futures component price of \$5.13 and a basis price of minus \$0.80. Therefore, the cash price of contract 33357 was \$4.33. As previously stated, the arbitrators agreed with Dakota Plains' use of July 6, 2011 closing futures as the buy-in price on the contracts. On July 6, 2011, futures closed at \$6.71 with a current delivery basis of minus \$0.27. Therefore, the July cash price amount for contract 33357 was \$6.44 per bushel. Dakota Plains was due the difference, which amounted to \$2.11 per bushel. Because Dakota Plains was owed on the undelivered portion of the contract that amounted to 28,965.36 bushels, the total awarded to Dakota Plains on contract 33357 was \$61,116.91.

Contract 33576 was a futures only contract with a futures component price of \$5.42. On July 6, 2011, July futures closed at \$6.71. Dakota Plains was due the difference, which amounted to \$1.29 per bushel. Because Dakota Plains was owed on the full 25,000 bushels under this contract, the total awarded to Dakota Plains on contract 33576 was \$32,250.

The arbitrators declined to award interest to Dakota Plains or attorney's fees to either party.

Therefore, the total awarded to Dakota Plains for this case was \$93,366.91.

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

**Robert E. Burkhardt, Chair**

C.F.O.

Maxyield Cooperative

West Bend, Iowa

**Russ Braun**

Grain Division Manager

Primeland Cooperatives

Lewiston, Idaho

**Jeff Van Pevenage**

Vice President, General Manager

Columbia Grain Inc.

Great Falls, Mont.