

**What if a customer is charged the wrong price for years?**

What happens when you are charged and pay the wrong price for years without objecting? Do you receive a refund? Does the higher price become permanent? According to a recent case, it depends on what you know.

In *World Fuel Services, Inc. v. Hotton Enterprises, Inc.*, 2 CA-CV 2015-0197 (Ariz. App. 2016), a seller charged a buyer a different price for airline fuel than the price in their contract. After hundreds of purchases, the buyer sought a sizeable credit for the overcharges.

Framing the issue as whether the parties modified the contract price, the court focused on whether the buyer knew it was being charged the wrong price. Under UCC § 1-303, “a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance” so long as the other party knowingly accepts or acquiesces to the different performance.

The court split the purchases into two categories: (1) purchases before the buyer discovered the price change and (2) purchases after the buyer discovered the price change. For the former, there was no modification of the contract price because the buyer did not know it was being charged a different price. For the latter, the court concluded the buyer’s repeat orders and payments modified the contract since the buyer knew about the different pricing.