

**IN ARBITRATION
UNDER CHAPTER XVIII OF THE RULES
OF THE CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED**

In The Matter Of)	
)	
Customer* ,)	
)	
Claimant,)	DECISION
)	
v.)	File No. 00NM07
Jeffrey I. Fried and)	
Bruce D. Drevets,)	
)	
Respondents.)	
)	

Representation

For Claimant:	Gregory N. Jones, Mackey Price & Williams, Salt Lake City, Utah
For Respondents:	Ronald P. Kane, Gomberg Kane & Fischer Ltd., Chicago, Illinois

Pleadings

Statement of Claim and Submission Agreement, filed on or about:	September 20, 2000
Answer and Submission Agreement, filed on or about:	October 30, 2000
Respondents' Counterclaim, filed on or about:	February 8, 2001
Claimant's Reply to Counterclaim, filed on or about:	March 5, 2001
Respondents' Motion to Dismiss, filed on or about:	September 14, 2001

Pre-Hearing

The named parties appeared at the pre-hearing sessions specified below:

<u>Date</u>	<u>No. of Sessions</u>	<u>Location</u>
April 2, 2001	1	Telephonic
May 21, 2001	1	Telephonic
June 28, 2001	1	Telephonic

Summary of Issues

On September 20, 2000, Claimant filed a Statement of Claim against **Jeffrey I. Fried and Bruce D. Drevets ("Respondents")**, the floor brokers who represented his market order to buy 10 CMG Information Services Inc. ("QGW"), Jan 100 Call Options on January 12, 1999. Claimant asserts that he placed the market order at 9:06 a.m. CST and that the order was not filled until 10:44 a.m. CST. Claimant alleges that Respondents delayed and mishandled the order causing Claimant to suffer damages in the amount of \$22,850. Claimant requests an award against Respondents in the amount of \$22,850 in compensatory damages, \$27,150 in punitive damages, interest from January 12, 1999, and all legal and related expenses.

In their Answer, filed October 30, 2000, Respondents deny responsibility for Claimant's loss, assert that a fast market and a trading halt occurred in QGW options on the morning of January 12, 1999, and allege that the claim is baseless and without merit. On February 8, 2001, Respondents filed a Counterclaim for arbitration fees and costs, as well as attorneys fees and costs, incurred in defending against a frivolous claim. Claimant's Reply to the Counterclaim, filed March 5, 2001, denies that the claim is frivolous and further asserts that Respondents' breached their fiduciary duty to timely execute Claimant's order.

Other Issues Resolved

On February 8, 2001, Respondents filed a Motion to Change Hearing Location, requesting that the hearing location be moved from Salt Lake City, Utah to Chicago, Illinois. Claimant's Opposition to Motion to Change Hearing Location was filed on March 5, 2001. This motion was argued at a telephonic pre-hearing on April 2, 2001, before a 2-member Arbitration Panel consisting of Jeffrey W. Shields, a public arbitrator located in Salt Lake City, Utah and Daniel Baldwin, an industry arbitrator located in Chicago, Illinois. The parties accepted the 2-member Panel for the purpose of resolving the Motion to Change Hearing Location. By order dated April 2, 2001, the Panel decided to transfer the hearing location to Chicago, Illinois.

On June 22, 2001, Respondents filed a Motion to Compel the production of documents and information by Claimant. Claimant did not file a response to the Motion to Compel with CBOE. In a ruling dated August 16, 2001 ("August 16th Order"), the Arbitration Panel Chair granted Respondents' Motion to Compel and directed Claimant to respond to Respondents' Request for the Production of Documents and Information within ten days of receipt of the order. The August 16th Order also provided that "[s]hould the Claimant fail to comply with this Order, the Panel will consider, upon application of the Respondents, appropriate sanctions." The August 16th Order was transmitted to both parties via facsimile and U.S. Mail on August 21, 2001.

On September 14, 2001, Respondents filed a Motion to Dismiss with Prejudice and for Award of Costs and Attorney's Fees ("Motion to Dismiss"), asserting that Claimant has failed to provide any response to Respondents' discovery requests or the Panel Chair's August 16, 2001 Order. Claimant did not file a response to the Motion to Dismiss with CBOE. The full Panel conferred and determined to decide the Motion to Dismiss on the papers.

In an Order Dismissing Case and Assessing Certain Costs, dated October 15, 2001 ("October 15th Order"), the Panel GRANTED the Motion to Dismiss the case with prejudice and DENIED "Respondents' request for attorneys fees and costs 'as requested in the Respondents' Counterclaim' for the reason that such an award would require a determination of the underlying merits of Claimant's claim which the Panel declines to make." However, the Panel awarded to Respondent and against Claimant reasonable Respondents' attorneys fees and costs incurred in preparing the Motion to Compel and the Motion to Dismiss, as well as forum fees due to CBOE. The October 15th Order directed Respondents to furnish an affidavit setting forth the fees and costs within ten days. The October 15th Order was transmitted to both parties via facsimile and Certified Mail on October 18, 2001. On October 25, 2001, Respondents' counsel submitted an Affidavit itemizing attorneys fees in the amount of \$481, which were incurred in connection with the Motion to Compel and Motion to Dismiss.

Award^{*}

After due deliberation and consideration of the pleadings, documentary evidence, and other submissions of the parties, the undersigned arbitrators, in full and final settlement of all issues in controversy, award as follows:

1. Claimant's Statement of Claim is dismissed, with prejudice.
2. Claimant shall pay attorney's fees in the amount of \$481 to Respondent.
3. Claimant shall pay forum fees to CBOE as set forth below.

Forum Fees

Pursuant to CBOE Rule 18.33, the Arbitrators assess the following forum fees:

Initial Filing Fee – Claim	Waived
Initial Filing Fee – Counterclaim	\$0
Pre-Hearing Fees (3 x \$300)	<u>\$900</u>
Total Forum Fees	\$900

1. Claimant is liable for and shall pay to the CBOE forum fees in the amount of \$500.
2. The CBOE shall retain the hearing session deposit in the amount of \$400 previously submitted by Claimant.

<u>/s/ Jeffrey W. Shields</u>	<u>November 14, 2001</u>
Jeffrey W. Shields, Chair and Public Arbitrator	Date

<u>/s/ Daniel Baldwin</u>	<u>November 21, 2001</u>
Daniel Baldwin, Industry Arbitrator	Date

<u>/s/ Michael L. Weissman</u>	<u>November 19, 2001</u>
Michael L. Weissman, Public Arbitrator	Date

\\

F:\Arb\award\00NM07

^{*} Pursuant to CBOE Rule 18.31, all monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction.