

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

In The Matter Of)	
)	
)	
Alan Zahtz and)	
Douglas R. Kaiser,)	
)	
Claimants)	DECISION
)	
v.)	File No. 01M005
)	
John Streibich, Timothy C. Boyd,)	
Timothy G. Keller, and)	
Beartooth Capital, LLC,)	
)	
Respondents.)	
)	

Representation

For Claimants:	Stephen Novack and Mitchell Marinello, Novack and Macey, Chicago, Illinois
For Respondent:	Steven Malina and Robert Griffith, Chicago, Illinois

Pleadings

Statement of Claim and Submission Agreement, filed on or about:	November 15, 2001
Answer, Motion to Dismiss, and Submission Agreement, filed on or about:	January 18, 2002
CounterClaim, filed on or about:	September 18, 2002
Answer to CounterClaim, filed on or about:	October 25, 2002

Hearing

The named parties appeared at the hearing sessions specified below, and had full opportunity to present arguments and evidence.

<u>Date(s)</u>	<u>No. of Sessions</u>	<u>Location</u>
December 17, 2002	2	Chicago, Illinois
December 18, 2002	2	Chicago, Illinois
December 19, 2002	1	Chicago, Illinois

Summary of Issues

On November 15, 2001, Alan Zahtz and Douglas R. Kaiser ("Claimants") filed a Statement of Claim against John Streibich, Timothy C. Boyd, Timothy G. Keller, and Beartooth Capital, LLC ("Respondents") for breach of an oral employment agreement ("Agreement"). Claimants assert that the parties entered into the Agreement in or around mid-1999 whereby Claimants agreed to assume

employment as floor brokers for Beartooth Capital, LLC (“Beartooth”), and further allowed Respondents to use Claimants’ names and experience for the purposes of securing certain designated market maker (“DPM”) appointments on the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”). Claimants further assert that, under the terms of the Agreement, in return for Claimants’ employment and assistance in securing DPM appointments for Respondents, Respondents promised to compensate each respective Claimant with: (a) an annual base salary of \$75,000; (b) insurance benefits; (c) IRA contributions; and (d) a bonus equal to 3% to 5% of the profits of Respondents’ profits, before considering salary expenses or other distributions to Beartooth principals. Claimants allege that Claimants satisfied their respective obligations under the terms of the Agreement.

Finally, Claimants allege that Respondents breached the Agreement by failing to pay Claimants the full amount of bonus pursuant to the terms of the Agreement. As such, in their Statement of Claim, Claimants seek damages in an amount not less than \$857,000. Claimants also request that the Arbitrators make a determination as to the full and accurate amount of profits made by Respondents during the period in question in order to ascertain additional monies due Claimants, if any, by Respondents. At the hearing, Claimants adjusted their claim by requesting that the arbitrators award Claimants damages in an amount equal to 5%, or alternatively 4%, 3%, or 2%, of Beartooth’s profits (\$23,076,118) during the period of dispute in the Claim.

Respondents assert that the Parties met in April, 2001, to discuss the termination of Claimants employment with Beartooth and that the Parties did enter into a termination agreement that settled any claims related to Claimants’ employment with Beartooth. Specifically, Respondents assert that, under the terms of the termination agreement, Respondents tendered the sum of \$50,000 in exchange for Claimants’ agreement to forego any claims for wages or benefits and to agree not to pursue any lawsuits or claims against Beartooth in any matter relating to Claimants’ employment with Beartooth.

On September 18, 2002, Respondents filed a counterclaim against Claimants alleging that Claimants breached the terms of the termination agreement, in which Claimants agreed not to raise any subsequent claims against Respondent related to the employment agreement. As such, Respondents seek the return of the \$50,000 tendered to Claimants under the termination agreement as well as reimbursement of all attorney fees incurred by Respondents in their defense of this Claim. Claimants assert that the awarding of attorney fees is improper under both Illinois and federal law and as a matter of public policy.

At the hearing, the Parties both agreed that, subsequent to the execution of the termination agreement and prior to the filing of this arbitration claim, Respondents John Streibich, Timothy Boyd, and Timothy Keller did each tender a check in the amount of \$7,000 payable to Alan Zahtz and a check in the amount of \$7,000 to Douglas Kaiser, for a total amount of \$42,000 to Claimants. The Parties agree that neither Alan Zahtz nor Douglas Kaiser presented their respective checks from Timothy Boyd for payment and that said checks remain in Claimants’ possession.

Award*

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

1. The panel denies Claimants request for compensatory damages.

* 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.

2. The panel orders Claimants to return to Respondent Timothy C. Boyd, check number 158 in the amount of \$7,000 and made payable to Alan Zahtz, and check number 159 in the amount of \$7,000 and made payable to Douglas Kaiser, and further orders Mr. Boyd to submit \$7,000 to Claimant Alan Zahtz and \$7,000 to Claimant Douglas Kaiser.
3. The panel denies Respondents' counterclaim for \$50,000.
4. The panel denies Respondents' claim for attorney fees and expenses incurred in this matter.
5. All forum fees, totaling \$8,000, incurred in this matter shall be shared equally among the Parties.

Forum Fees

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

Initial Filing Fee – Claim	\$1,000
Initial Filing Fee – CounterClaim	\$500
Hearing Session Fees (5 x \$1,000)	\$5,000
Pre-Hearing Session Fees (3 x \$500)	\$1,500
Adjournment Fee	N/A
Total	\$8,000

1. Responsibility for the forum fees, totaling \$8,000, is assessed equally between the parties.
2. The Exchange shall retain the non-refundable filing fees in the amount of \$1,000 and the hearing session deposit in the amount of \$1,000, both previously submitted by Claimants.
3. Claimants shall submit \$2,000 to the Chicago Board Options Exchange, Incorporated.
4. Respondent shall submit \$4,000 to the Chicago Board Options Exchange, Incorporated.

/s/ Joseph Kinahan
Joseph Kinahan, Chairman and Industry Arbitrator

January 6, 2003
Date

/s/ Christopher Cribari
Christopher Cribari, Industry Arbitrator

January 6, 2003
Date

/s/ Mark Kalas
Mark Kalas, Industry Arbitrator

December 31, 2002
Date