

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

_____	)	
In The Matter Of	)	
	)	
G-BAR LIMITED PARTNERSHIP,	)	
	)	
Claimant,	)	DECISION
	)	
v.	)	File No. 02M003
	)	
LAKOTA TRADING, INC.,	)	
	)	
Respondent.	)	
_____	)	

**Representation**

For Claimant(s):      Arthur W. Hahn, Christian T. Kemnitz, Katten Muchin Zavis, Chicago, IL  
For Respondent(s):    Arnold A. Pagniucci, Sachnoff & Weaver, Ltd., Chicago, IL

**Pleadings**

Statement of Claim and Submission Agreement, filed on or about:	March 27, 2002
Respondent's Motion to Dismiss, filed on or about:	April 25, 2002
Claimant's Response to Motion to Dismiss, filed on or about:	April 30, 2002
Answer and Submission Agreement, filed on or about:	July 12, 2002
Claimant's Reply to Respondent's Answer, filed on or about:	August 2, 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>
October 2, 2002	1	Chicago, IL
October 3, 2002	2	Chicago, IL

**Summary of Issues**

The dispute arises out of a Purchase Agreement between Claimant G-BAR LIMITED PARTNERSHIP ("G-Bar") and Respondent LAKOTA TRADING, INC. ("Lakota"). Pursuant to a purchase agreement, dated March 12, 2001, G-Bar consented to buy from Lakota the rights under employment contracts with a group of nineteen traders. Under the purchase agreement, G-Bar believed that Lakota would collect any benefits and bear all accrued liabilities associated with the traders prior to the closing date, set at March

31, 2001. G-Bar claims that it was owed \$843,722.63 by Lakota in connection with deferred trader compensation. On August 29, 2002, Lakota paid G-Bar \$683,500.33. G-Bar contends it is still owed \$160,222.30 as modified by the following four issues. (1) G-Bar alleges that Lakota owes G-Bar for employer tax liability totaling \$53,971.08 in connection with the traders' deferred compensation. Lakota denies that it is required to pay the taxes owed on that deferred compensation, and states that, pursuant to Section 1.3 of the purchase agreement, G-Bar is responsible for the disputed payments. (2) G-Bar alleges that Lakota is offsetting OCC rebates totaling \$72,792.29 received by G-Bar (relating to trading activity that took place prior to the closing date) against its payments to G-Bar. While accepting that Lakota is entitled to part of the rebates, G-Bar paid \$43,441.92 of the rebates to the traders under the belief that Lakota would have paid the same amount to the traders, pursuant to G-Bar's understanding of Lakota's past practices. G-Bar asserts that Lakota is only owed the remaining portion of the rebate, totaling \$29,350.37. Lakota asserts that it is entitled to keep \$72,792.29, the entirety of the rebates. (3) G-Bar alleges that Lakota is withholding payment pursuant to a refund of CBOE marketing fees totaling \$97,144.45 that had been collected from the traders during a 10-month period that began on July 1, 2000 and ended on April 30, 2001. G-Bar suggests that Lakota is entitled to \$14,198.95 of the refund based on a last-in, first-out calculation, or, alternatively, nine-tenths of the firm's share of the refund- \$35,099.96. Lakota replies that it paid the marketing fees for nine of the ten months of the period, totaling 90% of the marketing fees, and is therefore entitled to 90% of the entire refund, totaling \$87,430.01, and that Lakota is thus only liable to G-Bar for 10% of the entire refund, totaling \$9,714.45. (4) G-Bar asserts that it is due \$10,191.25 from Lakota for payment of American Stock Exchange and First Options brokerage bills from trading activity before the closing date. Lakota asserts G-Bar has no right to collect the cost of these charges from Lakota.

#### **Relief Requested**

G-Bar requests an award against Lakota in the amount of \$179,869.73 or \$200,770.74 in compensatory damages, plus interest, costs and attorneys' fees.

Lakota requests that G-Bar receive no awards beyond the abovementioned \$683,500.33 undisputed amount which Lakota has already paid to G-Bar.

#### **Other Issues Resolved**

At the hearing, Lakota presented a Motion to Exclude Testimony of Expert Witness. That motion was denied by the Panel.

#### **Award\***

After due deliberation and 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. G-Bar's request that Lakota pay the taxes that had accrued on the traders' deferred compensation, totaling \$53,971.08, is denied.
2. As to the OCC Rebate of \$72,792.29, G-Bar is entitled to \$43,441.92 and Lakota is entitled to \$29,350.37.

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\* 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.

3. As to the CBOE marketing fee refund, G-Bar is entitled to \$62,044.49 and Lakota is entitled to \$35,099.96.
4. As to the brokerage fees, G-Bar is entitled to \$10,191.25.
5. No award is rendered for interest, costs or attorneys fees.
6. Accordingly, Lakota shall pay G-Bar \$105,963.22.

#### 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	\$750
Hearing Session Fees (3 x \$1,000)	\$3,000
Total	\$4,750

1. Exchange shall retain the non-refundable filing fees in the amount of \$1,750 (\$1,000 submitted by Claimant and \$750 submitted by Respondent) and the hearing session deposits in the amount of \$1,750 (\$1,000 submitted by Claimant and \$750 submitted by Respondent) previously submitted by the parties.
2. The arbitrators assess responsibility for the remaining forum fees equally between the parties.
3. Respondent shall pay to the Exchange \$625.
4. Claimant shall pay to the Exchange \$625.

/s/ Joseph Mueller  
Joseph Mueller, Chair and Industry Arbitrator

October 25, 2002  
Date

/s/ Nina Milovac  
Nina Milovac, Industry Arbitrator

October 25, 2002  
Date

/s/ Thomas Beehler  
Thomas Beehler, Industry Arbitrator

October 25, 2002  
Date