

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

In The Matter Of)	
)	
)	
)	
John J. Piwowarczyk,)	
)	
Claimants/)	AWARD
Counter-Claim Respondents)	
v.)	File No.05M002
)	
Marshall Spiegel,)	
)	
)	
Respondent/)	
Counter-Claimant)	
)	

Representation

For Claimants:	James J. Judge, Vanasco Genelly & Miller, Chicago, Illinois
For Respondent:	Scott Early, Foley & Lardner, Chicago, Illinois

Pleadings

Statement of Claim and Submission Agreement, filed on or about:	April 27, 2005
Answer, filed on or about:	May 3, 2005
Counterclaim, filed on or about:	May 3, 2005
Answer to Counterclaim, filed on or about:	May 4, 2005

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>
May 4, 2005	1	Chicago, Illinois

Summary of Issues

On or about April 27, 2005, Mr. John Piwowarczyk ("Claimant"), filed a Statement of Claim against Marshall Spiegel ("Respondent"), which alleged that Respondent violated Claimant's rights under the terms of a Seat Lease Agreement ("Lease Agreement") entered into between the Claimant and Respondent on March 7, 2005. Specifically, Claimant alleges that the Lease Agreement provided, among other things, that Claimant would be the registered and holder of record of Claimant's Chicago Board Options Exchange, Incorporated's ("CBOE" or "Exchange") seat ("Seat") and would have the rights and privileges of membership in the CBOE, including the right to transact business on the CBOE from March 7, 2005 through September 6, 2005 ("Lease Period") and that Claimant would in turn pay Respondent the sum of Two Thousand and 00/100 Dollars (\$2,000.00) per month during the Lease Period. Claimant also

alleges that the Lease Agreement provided that either party may terminate the Lease Agreement by giving written notice at least Thirty (30) days prior to the proposed termination date.

Claimant further alleges that Respondent gave notice to Claimant on April 13, 2005 that Claimant intended to terminate the Lease Agreement as of April 30, 2005. Claimant alleges that Respondent terminated the Lease Agreement over a dispute as to which party, Claimant or Respondent, should be responsible for the March 2005 CBOE fees associated with the Seat. Claimant claims that, instead of bringing the dispute over CBOE fees before the CBOE Arbitration department, as is required under the Lease Agreement, Claimant improperly determined to terminate Claimant's rights under the Lease Agreement. As such, Claimant contends that, under the terms of the Lease Agreement, the first date that Claimant could legally terminate the Lease Agreement pursuant to written notice was May 14, 2005 and that Claimant's rights under the Lease Agreement should extend to at least June 6, 2005, the last day of the Lease Agreement month in which the termination became effective. Claimant has requested the arbitrators appointed to resolve this dispute to enjoin Respondent from terminating the Lease Agreement until June 6, 2005 and to order Respondent to pay Claimant's attorney fees and other costs incurred in the resolution of this arbitration.

On May 3, 2005, Respondent filed its written Response and Counterclaim to Claimant's Statement ("Response") of Claim in this matter. In his Response, Respondent alleges that Claimant willfully and unreasonably breached the terms of the Lease Agreement by refusing to pay the CBOE Lease dues for the month of March as required under the Lease Agreement. Accordingly, Respondent contends that he, verbally and by a letter sent via facsimile to Claimant, on April 13, 2005 provided notice that the Lease Agreement would be effectively terminated on April 30, 2005. Respondent also contends that this notification was later revised by written notice to extend the termination date up to and including May 13, 2005.

Respondent claims that, because of Claimant's breach of the Lease Agreement, Respondent has lost certain income from a new lease agreement that was entered into with a third party and that would have been effective as of May 1, 2005. Respondent contends that the June 6, 2005 termination date proposed by Claimant is contrary to the terms of the Lease Agreement, which specify a Thirty (30) day notice period, not Fifty One (51) days, as Claimant is contending. As such, Respondent is requesting that the arbitrators affirm the termination of the Lease Agreement effective immediately, but no later than the close of business on May 13, 2005. Further, Respondent requests the arbitrators to award Respondent monetary damages incurred as a result of Claimant's alleged conduct, including lost lease rental, and CBOE dues payments, for a total amount of Two Thousand Eight Hundred Sixty and 00/100 Dollars (\$2,860.00). Respondent also requests the arbitrators to award Respondent attorney fees and costs incurred in the resolution of this arbitration.

Award*

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

1. Claimant's request to enjoin the termination of the Lease Agreement until June 6, 2005 is denied.
2. Claimant's Request for attorney fees and costs is denied.

* 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. The Lease Agreement shall be effective up to and including May 13, 2005.
4. Claimant shall pay Respondent the sum of Five Hundred and 00/100 Dollars (\$500.00).
5. Respondent's request for attorney fees and costs is denied.
6. Claimant shall be responsible for Three Hundred Seventy Five and 00/100 Dollars (\$375.00) in forum fees.
7. Respondent shall be responsible for Four Hundred and 00/100 Dollars (\$400.00) in forum fees.

Forum Fees

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

Initial Filing Fee – Claim	\$75
Initial Filing Fee – Counterclaim	\$100
Hearing Session Fees (1 x \$600)	\$600
Total	\$775

1. Responsibility for the forum fees, totaling \$775 shall be assessed as follows: Claimant shall be responsible for \$375 and Respondent shall be responsible for \$400.
2. The Exchange shall retain the \$75 filing fee previously submitted by Claimant and shall retain \$300 of the hearing fee deposit previously submitted by Claimant. As Claimant submitted a total of \$675 along with its Statement of Claim, the Exchange shall submit a refund to Claimant in the amount of \$300.
3. The Exchange shall retain \$100 of the \$250 filing fee previously submitted by Respondent and shall retain \$300 of the hearing fee deposit previously submitted by Respondent. As Respondent submitted a total of \$850 along with its Response and Counterclaim, the Exchange shall submit a refund to Claimant in the amount of \$450.

<u>s/s/ Thomas R. Beehler</u>	<u>05/05/05</u>
Thomas R. Beehler, Chairman and Industry Arbitrator	Date
<u>s/s Stephen P. Donahue</u>	<u>05/06/05</u>
Stephen P. Donahue, Industry Arbitrator	Date
<u>s/s/ J. Todd Weingart</u>	<u>05/05/05</u>
J. Todd Weingart, Industry Arbitrator	Date