

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

IN THE MATTER OF	)	
	)	
Thomas Lang,	)	
	)	
Claimant,	)	
	)	
v.	)	File No. 05M003
	)	
SMC Option Management, LLC,	)	
	)	
Respondent.	)	
	)	

**Representation**

For Claimants:	Robert Sweeney
For Respondent:	Kevin Besetzny, Charmaine Vivar and Dean Polales

**Pleadings**

SMC Option Management, LLC Statement of Claim and Submission Agreement, filed on or about:	September 12, 2005
Re-filed Statement of Claim by Thomas Lang, filed on or about:	June 1, 2006
SMC Option Management, LLC Answer and Counterclaim, filed on or about:	June 30, 2006
Amended Counterclaim, filed on or about:	November 16, 2006
Answer to Counterclaim, filed on or about:	December 14, 2006
Motion to Dismiss Counterclaim, filed on or about:	December 14, 2006
Thomas Lang's Motion to Bar Witnesses and documents, filed on or about:	December 21, 2006

**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>
January 4, 2007	1	Chicago, Illinois
January 5, 2007	1	Chicago, Illinois
January 12, 2007	1	Chicago, Illinois

### Summary of Issues

On or about September 12, 2005, SMC Option Management, LLC ("SMC"), filed a Statement of Claim against Thomas Lang ("Lang"). Pursuant to a prehearing conference call held on April 18, 2006, the Parties entered a Motion for Leave to re-file the pleadings in this matter. The Arbitrators, pursuant to its Order dated April 25, 2006, granted the Parties' Motion for Leave to re-file the pleadings in this matter upon which Lang filed a Statement of Claim and SMC filed an Answer and Counterclaim to Lang's Statement of Claim.

On or about June 1, 2006, Lang, filed a Statement of Claim ("Statement of Claim") against SMC, claiming (i) Breach of Contract, (ii) Breach of Fiduciary Duty and (iii) Conversion. Lang's Statement of Claim alleges that SMC breached the Supplemental Trading Agreement ("Agreement") executed between Lang and SMC which governed their relationship during the term of Lang's employment by SMC. Lang alleges that SMC breached the Agreement when SMC (i) refused to distribute the \$50,000.00 of Undistributed Net Trading Profits Lang requested in January 2004, (ii) refused to distribute additional Undistributed Net Trading Profits in May 2004 and (iii) terminated Lang on June 1, 2004 and subsequently refused to turn over any of Lang's Undistributed Net Trading Profits. Lang further contends that Lang's association with SMC constituted fiduciary relations between the two parties and as a result of that relationship Lang entrusted SMC with certain funds. Lang alleges that SMC breached this fiduciary duty when SMC usurped Lang's funds and held them for SMC's own gain. Lang further alleges that Lang has an absolute and unconditional right to the full amount of the balances in his trading account with SMC as of the date of his departure from SMC in June 2004. Lang contends he made a demand for the balance of the account and that SMC refused such demand. Lang alleges that SMC wrongfully assumed control over Lang's property when SMC refused to give back the balance of the account to Lang. In such, Lang requests (i) an award in an amount to be proven after which such amount shall be in excess of \$100,000, (ii) a full refund of the amounts held in Lang's account as of his final date with SMC, (iii) punitive damages in the amount of not less than \$500,000, and (iv) attorney fees and costs associated with the claim.

SMC filed an answer to the Statement of Claim on or about June 30, 2006 ("Answer"). In its Answer, SMC denies all claims and allegations made by Lang. In its Answer, SMC denies that SMC breached its contract with Lang in that SMC denies that Lang was terminated on June 1, 2004. SMC further contends that Lang did not intend on fulfilling his duties as provided under the Agreement and that Lang desired to terminate the Agreement. In its Answer, SMC denies that it embarked on any illegal course of conduct and denies that it elected to usurp and hold off for its own gain any of Lang's funds. SMC further denies that it wrongfully assumed control or ownership over Lang's property.

In addition to its Answer, SMC filed a Counterclaim to the Statement of Claim on or about June 30, 2006. On November 16, 2006, SMC filed an amended Counterclaim ("Counterclaim"). In its Counterclaim, SMC claims that prior to May 26, 2004, Lang informed SMC's partners that he would not be returning to SMC to fulfill his duties and obligations under the Agreement. SMC contends that Lang's failure to honor his duties and obligations under the Agreement caused SMC to suffer financial damages and losses in excess of \$144,000.00. SMC further alleges that SMC incurred attorneys' fees when Lang directed correspondences to SMC's counsel demanding payment in the sum of \$98,220.00. SMC further alleges that Lang improperly filed his complaint in the Circuit Court of Cook County, Illinois when the matter should have been filed with CBOE. As a result, SMC alleges that it incurred damages and losses of \$144,000.00, paid in excess of \$10,000.00 in attorneys' fees and related expense, and paid \$2,000.00 in filing fees and hearing session deposits. Therefore, in its Counterclaim, SMC requests an award for said amounts.

Lang filed a Motion to Dismiss SMC's Counterclaim on December 14, 2006. In its Motion to Dismiss, Lang contends that SMC's claim for \$144,000.00 in lost profits is completely speculative and unreliable and that SMC has proffered nothing to substantiate such claim. Lang contends that SMC has not established that lost profits were ever contemplated by the Parties when the Agreement was executed. Lang further contends that SMC has failed to provide any facts and documents to support the Counterclaim as required under CBOE's Arbitration Rules. Therefore, Lang requests that SMC's counterclaim be dismissed.

#### **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. Lang's Motion to Dismiss SMC's Counterclaim is denied.
2. Lang's Motion to Bar Witnesses and Documents is denied.
3. Lang is hereby awarded \$40,000.
4. Lang's request for punitive damages is denied.
5. Lang's request for attorney fees and costs is denied.
6. SMC's request in its Counterclaim for (i) damages and losses, (ii) attorneys fees and related expense, and (iii) filing fees and hearing session deposits is denied.
7. Lang and SMC shall each pay 50% of all filing and forum fees, totaling \$4,750.

#### **Forum Fees**

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

Initial Filing Fee - Claim	\$750
Initial Filing Fee - Counterclaim	\$750
Pre-hearing Session Fees (2 x \$500)	\$1,000
Hearing session Fees (3 x \$750)	\$2,250
Adjournment Fee (2 x \$750)	Waived
Total	\$4,750

1. Responsibility for the filing and forum fees, totaling \$4,750, shall be assessed as follows:  
Lang shall be responsible for \$2,375 and SMC shall be responsible for \$2,375.

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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.

2. The Exchange shall retain the non-refundable filing fees and the hearing session deposits, as previously submitted by both Lang and SMC. Lang initially submitted \$1,000 and SMC initially submitted \$2,000 in filing fees and hearing session deposits.
3. Lang shall submit an additional \$1,375 to the Chicago Board Options Exchange, Incorporated.
4. SMC shall submit an additional \$375 to the Chicago Board Options Exchange, Incorporated.

BY:	<u>/s/ Thomas Beehler</u>	<u>02/09/2007</u>
	Thomas Beehler, Chairman and Industry Arbitrator	Date
	<u>/s/ Henry Choi</u>	<u>02/11/2007</u>
	Henry Choi, Industry Arbitrator	Date
	<u>/s/ Joseph Mueller</u>	<u>02/09/07</u>
	Joseph Mueller, Industry Arbitrator	Date