

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

IN THE MATTER OF	)	
	)	
	)	
Kevin Keller and Kell/Martinez, LLC,	)	
	)	
Claimants,	)	File No. 06M002
	)	
v.	)	
	)	
Jason Martinez,	)	
	)	
Respondent.	)	
	)	

**Representation**

For Claimants:	Kevin Besetzny and Charmaine Vivar (Besetzny, Rzepczynski, Vivar, LLC)
For Respondent:	Peter J. Berman (Peter J. Berman, Ltd.)

**Pleadings**

Kevin Keller and Kell/Martinez, LLC Statement of Claim and Submission Agreement, filed on or about:	June 22, 2006
Jason Martinez Answer, Motion to Dismiss and Submission Agreement, filed on or about:	August 17, 2006
Kevin Keller and Kell/Martinez, LLC Response to Jason Martinez Motion to Dismiss, filed on or about:	October 13, 2006
Jason Martinez Reply to Kevin Keller and Kell/Martinez, LLC Response, filed on or about:	October 17, 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>
May 2, 2007	1	Chicago, Illinois
May 3, 2007	1	Chicago, Illinois
May 4, 2007	1	Chicago, Illinois

**Summary of Issues**

On or about June 22, 2006, Kevin Keller and Kell/Martinez, LLC ("Claimants"), filed a Statement of Claim ("Statement of Claim") against Jason Martinez ("Respondent"). Claimants' Statement of Claim alleges Respondent's withdrawal of funds in the amount of \$195,314.04 ("funds" or "monies") combined

with Respondents resignation and refusal to return the monies constituted a breach of the Kell/Martinez Operating Agreement (“Operating Agreement”) and that Claimants have a legal right to the possession of these funds. Claimant further alleges that the Respondent wrongfully asserted dominion, control and/or possession over the funds and that Respondents conduct was willful and with knowing disregard of Claimants rights over the funds. In such, Claimant requests: (i) an award in the amount of \$195,314.04, (ii) interest, (iii) punitive damages, (iv) attorneys fees and other fees, expenses and costs incurred in this claim and (v) all other relief that the Panel may deem appropriate.

Respondent filed an answer to the Statement of Claim on or about August 17, 2006 (“Answer”). In the Answer, Respondent contends that Kevin Keller directed Kell/Martinez, Inc.’s clearing firm First Options of Chicago, Inc. to issue each and every check that Kell/Martinez, Inc. issued to Pioneer Capital Management, Inc. (“Pioneer”) and that Kell/Martinez, Inc. never paid any money to Jason Martinez. Respondent further contends that Claimants have not brought a claim against Pioneer. Respondent contends that Kevin Keller’s wholly owned corporation KLR Trading Corp., Inc. (“KLR”) and Jason Martinez’s wholly owned corporation Pioneer formed Kell/Martinez, Inc. and that based on the Kell/Martinez, Inc.’s Operating Agreement, neither member was required to return any profits or capital that Kell/Martinez, Inc. distributed to them. Respondent further contends that nothing in the Kell/Martinez, Inc.’s Articles of Organization, or any applicable law, would allow Claimants to recover any of the capital distributions it made to Pioneer. Respondent therefore requests that Claimants claim be denied.

In addition to its Answer, Respondent filed a Motion to Dismiss Claimants’ Statement of Claim on August 17, 2006. In his Motion to Dismiss, Respondent contends that (i) Kell/Martinez had no authority to bring this Statement of Claim since the statement of Claim was withdrawn by Pioneer, (ii) that the Statement of Claim does not arise out of Exchange business and (iii) Kevin Keller did not suffer any individual losses. Respondent therefore requested that Claimants’ Statement of Claim be dismissed. Claimants filed a Response to Respondent’s Motion to Dismiss on October 13, 2006. Respondent in turn filed a Reply to Claimants’ Response on October 17, 2006.

After due deliberation and in consideration of all briefs and oral arguments at a pre-hearing conference held on November 17, 2006, and all submissions made by the parties, the undergoing arbitrators denied Respondent’s motion to dismiss pursuant to an Order issued on November 21, 2006 and ordered that this matter proceed to full hearing, which was held on May 2, 3 and 4, 2007.

#### **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. Claimants are hereby awarded \$154,473.
2. Claimants’ request for punitive damages is denied.
3. Claimants’ request for attorney fees and costs is denied.
4. Respondent’s request for attorney fees and costs is denied.
5. Claimants and Respondent shall pay all filing and forum fees as detailed below.

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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.

### Forum Fees

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

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

1. Responsibility for the filing fee, totaling \$750, shall be assessed as follows: Claimants shall be responsible for \$750.
2. Responsibility for the forum fees, totaling \$2,750, shall be assessed as follows: Claimants shall be responsible for \$1,375 and Respondent shall be responsible for \$1,375.
3. The Exchange shall retain the non-refundable filing fees and the hearing session deposits, as previously submitted by Claimants. Claimants initially submitted \$1,500.
4. Claimants shall submit an additional \$625 to the Chicago Board Options Exchange, Incorporated.
5. Respondent shall submit \$1,375 to the Chicago Board Options Exchange, Incorporated.

<u>/s/ Thomas Stern</u>	<u>05/31/2007</u>
Thomas Stern, Chairman and Industry Arbitrator	Date
<u>/s/ Brock McNerney</u>	<u>06/01/2007</u>
Brock McNerney, Industry Arbitrator	Date
<u>/s/ Ann Grady</u>	<u>05/31/2007</u>
Ann Grady, Industry Arbitrator	Date