

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

IN THE MATTER OF	)	
	)	
	)	
Harrison Trading Group, Inc.,	)	
	)	
Claimant,	)	
	)	
v.	)	File No. 06M003
	)	
Gregory Gentile and JAG Derivatives,	)	
	)	
Respondents.	)	
	)	

**Representation**

For Claimant:	Martin B. Carroll (Fox, Hefter, Swibel, Levin & Carroll, LLP)
For Respondents:	Norman M. Valz (Norman M. Valz, Ltd.)

**Pleadings**

Harrison Trading Group, Inc. Statement of Claim and Submission Agreement, filed on or about:	September 5, 2006
Gregory Gentile and JAG Derivatives Answer, Motion to Dismiss and Submission Agreement, filed on or about:	November 13, 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>
February 11, 2008	1	Chicago, Illinois
February 12, 2008	1	Chicago, Illinois

**Summary of Issues**

On or about September 5, 2006, Harrison Trading Group, Inc. ("HTG" or "Claimant"), filed a Statement of Claim ("Statement of Claim") against Gregory Gentile ("Gentile") and JAG Derivatives ("JAG") (collectively referred to as "Respondents"). Claimant's Statement of Claim alleges that Respondents are liable to Claimant pursuant to two contracts that governed Claimant's relationship with Respondents at different times.

First, the Statement of Claim alleges that the contract referenced as the Member Admission Agreement ("Member Admission Agreement") governed the relationship between HTG and JAG from the period of August 2, 2004 until January 4, 2006. The Statement of Claim alleges that the Member Admission Agreement provides that JAG would be liable to HTG for any expenses incurred in connection with its trading activities at HTG. The Statement of Claim alleges that HTG paid \$62,706.34 in expenses

incurred by JAG in connection with its trading activities and that JAG has not reimbursed HTG for such expenses as required by the Member Admission Agreement.

Second, the Statement of Claim alleges that the contract referenced as the Independent Contractor Agreement (“Independent Contractor Agreement”) was executed between HTG and Gentile on January 5, 2006. The Statement of Claim alleges that pursuant to the Independent Contractor Agreement, Gentile would be required to indemnify HTG for up to \$100,000 in trading losses incurred by Gentile in relation to his trading activities in account one (“Account One”). Specifically, the Statement of Claim alleges that the Independent Contractor Agreement provides:

“So long as Contractor has fully complied with the Risk Parameters, he will be required, and hereby does agree, to indemnify and hold the Company harmless from trading losses incurred in Account One (“Account One”), up to an aggregate indemnification obligation of \$100,000.”

The Statement of Claim alleges that Gentile accumulated more than \$100,000 in trading losses in Account One and therefore is liable to HTG for \$100,000 pursuant to the indemnification clause in the Independent Contractor Agreement.

The Statement of Claim also alleges that the Independent Contractor Agreement further provides that in the event of any such arbitration agreement, “the prevailing party shall be entitled to recover from the non-prevailing party all of its attorneys’ fees and expenses, in addition to such other damages as may be awarded at law or in equity.”

Therefore, Claimant in its Statement of Claim requests an award in its favor of (i) \$100,000 pursuant to the indemnification clause in the Independent Contractor Agreement, (ii) \$62,706.34 which constitutes the unreimbursed expenses owed by Gentile and JAG to HTG pursuant to the Member Admission Agreement, (iii) reasonable attorneys’ fees and costs and (iv) any other relief deemed just and proper.

Respondent filed an answer to the Statement of Claim on or about November 13, 2006 (“Answer”). In the Answer, Respondent contends that Claimant’s allegations in the Statement of Claim are completely without basis as the subsequent contract, drafted on behalf of the Claimant, indicates no duty to reimburse trading expenses or to indemnify HTG given the existence of one trading account. Respondent further contends that since there was no duty to reimburse HTG or to indemnify HTG, Respondent cannot be held to have breached a contract or failed to abide by the terms of any obligation to HTG. In addition, in the Answer, Respondent asserts the following Affirmative Defenses: (i) Claimant has failed to state a claim for which relief can be granted, (ii) Claimant failed to state a claim for breach of contract, (iii) Claimant’s contract claim against Gentile is barred by the Statute of Frauds, (iv) Claimant cannot prove loss causation, (v) Claimant has failed to set forth with any reasonable degree of certainty damages attributable to Gentile’s conduct, (vi) Claimant’s contract claim is barred by the doctrine of waiver, (vii) Claimant’s contract claim is barred by the doctrine of accord and satisfaction, (viii) Claimant’s contract claim is barred by the doctrine of laches and (ix) Claimant’s claims against Gentile are all barred by the Statute of Limitations. Respondent therefore requests that Claimant’s Statement of Claim be denied.

In addition to its Answer, Respondent filed a Motion to Dismiss Claimant’s Statement of Claim on November 13, 2006. In the Motion to Dismiss, Respondent contends that since Claimant offered no facts entitling Claimant relief, under such circumstances the Panel should dismiss the Statement of Claim.

After due deliberation and in consideration of Respondent’s Motion to Dismiss, the undergoing arbitrators denied Respondent’s motion to dismiss pursuant to an Order issued on March 13, 2007 and directed that this matter proceed to hearing.

Prior to the start of the hearing on February 11, 2008, Claimant voluntarily withdrew the \$62,706.34 claim against JAG and Gentile in which Claimant alleged JAG and Gentile were required to pay HTG for expenses pursuant to the Member Admission Agreement. Claimant proceeded on the \$100,000 claim against Gentile in which Claimant alleged Gentile is required to indemnify HTG pursuant to the Independent Contractor Agreement.

#### 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 is hereby awarded \$100,000 in damages.
2. Claimant is hereby awarded \$15,461 in attorneys' fees and costs.
3. Respondent's request for attorney fees and costs is denied.
4. Claimant and Respondent shall pay all filing and forum fees as detailed below.

#### 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 (0)	\$0
Adjournment of hearings (1)	waived
Hearing session Fees (2 x \$750)	<u>\$1,500</u>
Total	\$2,250

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

<u>/s/ William Shimanek</u> William Shimanek, Chairman and Industry Arbitrator	<u>03/05/08</u> Date
<u>/s/ Patrick McDermott</u> Patrick McDermott, Industry Arbitrator	<u>03/10/08</u> Date
<u>/s/ Michael Held</u> Michael Held, Industry Arbitrator	<u>03/08/08</u> Date

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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.