

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

IN THE MATTER OF	)	
	)	
J. David Fikejs	)	
	)	
Claimant/Counter-Claim	)	
Respondent,	)	
	)	
v.	)	File No. 09M001
	)	
John T. Lundy,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
JTL Investments, L.L.C.	)	
	)	
Respondent/Counter-	)	
Claimant.	)	
_____	)	

**Representation**

For Claimant:	Gerald Miller (Vanasco Genelly & Miller)
For Respondents:	Martin Carroll, Adam Hachikian (Fox, Hefter, Swibel, Levin & Carroll, LLP)

**Pleadings**

- J. David Fikejs Statement of Claim<sup>1</sup>  
and Uniform Submission Agreement, filed on or about: November 2, 2009
  
- John T. Lundy and JTL Investments, LLC Answer and Counterclaims<sup>2</sup>  
and Uniform Submission Agreement, filed on or about: November 27, 2009
  
- J. David Fikejs Answer to the Counterclaim, filed on or about: December 14, 2009

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<sup>1</sup> This version of the Statement of Claim replaced two earlier submissions that were filed on September 11, 2009 and October 28, 2009.

<sup>2</sup> This version of the Answer and Counterclaims replaced an earlier submission that was filed on October 19, 2009.

### Hearing

The named parties appeared at the hearing sessions specified below, and had a full opportunity to present arguments and evidence.

<u>Date(s)</u>	<u>No. of Sessions</u>	<u>Location</u>
August 30, 2010	1	Chicago, Illinois
August 31, 2010	1	Chicago, Illinois

### Summary of Issues

On or about November 2, 2009, J. David Fikejs (“Claimant”), filed a Statement of Claim (“Statement of Claim”) against John T. Lundy (“Lundy”) and JTL Investments, LLC (“JTL”), (collectively referred to as “Respondents”).

Claimant’s Statement of Claim alleged that Respondents ceased to perform duties for Platinum Trading, L.L.C. (“Platinum”) but sought the same profit percentage that was allocated prior to ceasing performance of those duties, in violation of Platinum’s Operating Agreement. Specifically, Claimant alleges that (i) Lundy was a member of the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) until January 2009 and, through JTL is a member of Platinum but ceased being an active member of Platinum on May 1, 2008; (ii) Platinum was formed in 1998 as a Designated Primary Market-Maker (“DPM”) at CBOE by Claimant and Lundy, through Blackbird Holdings, LLC (“Blackbird”), as well as other financial backers, including other companies owned by Claimant and Lundy; (iii) Blackbird was owned equally by Claimant and Lundy and Claimant and Lundy were required to spend 100% of their time on its operation, they were to jointly run the business, share equally in the work, take equal vacations and, on that basis, receive equal shares of the profits; (iv) Blackbird initially received a portion of its share of the Platinum profit in the form of a draw against its profit percentage but subsequently, the financial backers chose to make the payment to Blackbird in the form of a salary; (v) in 2006, Blackbird purchased the financial backers’ interest in Platinum’s CBOE seat and Blackbird contributed the CBOE seat to Platinum as an additional capital contribution of financial backers; (vi) the 2006 amendment to the Operating Agreement set forth the allocation of profits based on cash contributions of the financial backers and, in addition, to Claimant and Lundy for (a) contributing the CBOE seat through Blackbird and (b) in return for their equal performance of services, Blackbird would continue to receive a monthly salary; (vii) in late December 2007, Lundy suggested to Claimant that Lundy wanted to leave the business on May 1, 2008; (viii) Claimant and Lundy did not agree to the terms of Lundy’s departure from Platinum and Blackbird; (ix) on May 1, 2008, Lundy did not come to work and has not returned to work since that date, despite Claimant’s repeated requests for Lundy to return to work; (x) Lundy is not entitled to the profit allocation relating to his performance of services under the Operating Agreement for the period from May through December 2008 as a result of Lundy ceasing his performance of services for Platinum; (xi) Claimant is entitled to the profits relating to performance of services under the Operating Agreement for May through December 2008; and (xii) Claimant is entitled to such profit allocation thereafter.

Therefore, Claimant in the Statement of Claim has requested damages in the amount of \$680,239.71, based on Lundy’s absence from the firm, representing the portion of the profits from May 2008 through December 2008, which would previously have been allocable to Lundy (and JTL) for his performance of services.

On or about November 27, 2009, Respondents submitted an Answer in which Respondents contend that under the express terms of the Operating Agreement, JTL and Claimant's two companies share in the profits (and bear the losses) of Platinum equally, irrespective of their participation in the management of Platinum. Respondents contend that Platinum's manager, per the Operating Agreement, is Blackbird, which is owned equally by JTL and Fikejs Company ("Fikco"), an entity owned by Claimant. Respondents argue that the 2006 Operating Agreement provides that Blackbird shall be paid \$20,000 per month for its services as a Manager. Further, Respondents assert that the Operating Agreement directs equal payments of profits and losses, for the portion of profits and losses allocable to JTL and Claimant, through Fikco and New Millennium Global Investments, L.L.C. Respondents argue that the Operating Agreement sets forth JTL's right to receive full distribution of profits and that Platinum's business model enables any or all members to stop trading.

JTL also asserted several counterclaims against Claimant. JTL asserted that: (i) Claimant has failed and refused to distribute profits from Platinum to JTL as provided for by the Operating Agreement; (ii) Claimant has wrongfully refused to provide JTL with financial statements for Platinum and Blackbird since May 1, 2008 an accounting of all revenues and expenses of Platinum and Blackbird from May 1, 2008 to the present and provide quarterly financial statements going forward.

JTL seeks the following: (i) a finding that JTL is entitled to a profit distribution consistent with the Operating Agreement in the amount of \$680,239.71 and (ii) an accounting of all revenues and expenses of Platinum and Blackbird from May 1, 2008 to the present and provide quarterly financial statements going forward.<sup>3</sup>

On or about December 14, 2009, Claimant submitted an Answer to the Counterclaim in which Claimant seeks dismissal of the counterclaims and denies that JTL is entitled to the percentages claimed in the counterclaim. Further, Claimant denies that he has refused to provide JTL with financial statements.

#### Award<sup>4</sup>

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 for actual damages is denied.
2. Respondents' request for damages is granted, in part, in the amount of \$394,238.23.
3. Respondents shall pay all filing and forum fees as detailed below.

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<sup>3</sup> Based on information presented at the hearing, the request for an accounting of all revenues and expenses of Platinum and Blackbird from May 1, 2008 to the present and quarterly financial statements going forward is moot.

<sup>4</sup> 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	\$1,000
Initial Filing Fee – Counterclaim	\$1,000
Pre-hearing session Fees (1)	\$500
Hearing session Fees (2 x \$1,000)	<u>\$2,000</u>
Total	\$4,500

1. The Exchange shall retain the non-refundable filing fees and the hearing session deposits, as previously submitted by Claimant and Respondents. Claimant initially submitted \$1,000 for the filing fee and \$1,000 for the hearing deposit. Respondents initially submitted \$1,000 for the filing fee and \$1,000 for the hearing deposit.
2. Responsibility for the forum fees, totaling \$4,500, shall be assessed as follows: Respondents shall be responsible for \$4,500.
3. Respondents shall submit \$500 to the Chicago Board Options Exchange, Incorporated.
4. Respondents shall submit \$2,000 to the Claimant.

/s/ Thomas E. Stern  
Thomas E. Stern, Chairman and Industry Arbitrator

October 5, 2010  
Date

/s/ David J. Drummond  
David J. Drummond, Industry Arbitrator

October 5, 2010  
Date

/s/ Duncan Robinson  
Duncan Robinson, Industry Arbitrator

October 5, 2010  
Date