

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

IN THE MATTER OF	)	
	)	
	)	
Richardo Forrer, Joseph Hayes	)	
and Jacques Fernandes	)	
	)	
Claimants/Counter-Claim	)	
Respondents,	)	
	)	
v.	)	File No. 09M003
	)	
Louis Panos and Panos Trading LLC	)	
	)	
Respondents/Counter-Claimants.	)	
	)	

**Representation**

For Claimant:	Charles J. Risch, John D. Ruark (Lawrence, Kamin, Saunders & Uhlenhop LLC)
For Respondent:	Edward T. Anderson; Gregg M. Rzepczynski, (Gregg M. Rzepczynski & Associates)

**Pleadings**

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|---|------------------|
| ▪ Richardo Forrer, Joseph Hayes and Jacques Fernandes<br>Statement of Claim and Uniform Submission Agreement,<br>filed on or about:                             | November 3, 2009 |
| ▪ Louis Panos and Panos Trading LLC's Answer, Response, and<br>Affirmative Defenses, Initial Motion to Dismiss, and Initial<br>Counterclaim, filed on or about: | January 11, 2010 |
| ▪ Richardo Forrer, Joseph Hayes and Jacques Fernandes<br>Answer to Motion to Dismiss and Counterclaim,<br>filed on or about:                                    | January 21, 2010 |
| ▪ Louis Panos and Panos Trading LLC's First Amended and<br>Restated Counterclaim and Motion to Dismiss, filed on or about:                                      | June 3, 2011     |
| ▪ Richardo Forrer, Joseph Hayes and Jacques Fernandes<br>Answer to First Amended and Restated Counterclaim,<br>filed on or about:                               | June 17, 2011    |

### 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>
September 13, 2011	1	Chicago, Illinois
September 15, 2011	2	Chicago, Illinois
September 19, 2011	1	Chicago, Illinois
September 20, 2011	1	Chicago, Illinois
September 27, 2011	2	Chicago, Illinois
September 28, 2011	1	Chicago, Illinois

### Summary of Issues

On or about November 3, 2009, Richardo Forrer, Joseph Hayes and Jacques Fernandes (collectively, "Claimants"), filed a Statement of Claim against Louis Panos and Panos Trading LLC (collectively, "Respondents").

Claimants' Statement of Claim alleged (i) breach of contract; (ii) tortious interference with Claimants' prospective business advantage; and (iii) breach of Respondents' obligation of good faith and fair dealing.

Therefore, Claimants in their Statement of Claim have requested: (i) \$2,000,000, plus interest from January 1, 2008 that are due and owing under the agreement; and (ii) approximately \$1,000,000 for interference with Claimants ability to trade their options and futures positions during the period November 15, 2007 through January 28, 2008.

On or about January 11, 2010, Respondents submitted an Answer, Response and Affirmative Defenses, Initial Motion to Dismiss and Initial Counterclaim ("Answer") (i) providing that Respondents abided by the signed agreements with the Claimants; (ii) denying Claimants' assertions that any other valid or enforceable agreements were in existence; (iii) denying that Respondents owe Claimants \$2,000,000 or any other amount; and (iv) denying Claimants allegations that positions held during the period of November 15, 2007 through January 28, 2008 were Claimants positions from a legal, regulatory and membership perspective.

Respondents requested, in the Answer, (i) dismissal of the Statement of Claim, with prejudice; (ii) an award to Respondents for their costs, including reasonable attorney fees incurred related to this claim; and (iii) such other just and appropriate relief as the panel should determine.

On or about January 21, 2010, Claimants submitted an Answer to the Motion to Dismiss and Counterclaim providing that the Answer did not set forth a specific Counterclaim and denying that (i) Claimants failed in any of their obligations to set up an account that would accept the transfer of subject positions; (ii) Panos attempted to transfer the positions within the time frame to which he had agreed and (iii) Respondents suffered any damages by reason of any wrongful act or breach of any Claimant.

On or about June 3, 2011, Respondents submitted a First Amended and Restated Counterclaim and Motion to Dismiss including allegations that: (i) Claimants incurred trading losses as a result of trading in violation of the risk parameters of the firm and as a result of the applicable rule, regulation and law, in violation of Claimants' signed LLC Agreement; (ii) Claimants have not taken these losses and their promised indemnification for these losses into account in the Statement of Claim; (iii) Respondents relied on Claimants representations and Agreements and in determining whether or not to do business with Claimants; and (iv) Claimants previously demanded and accepted amounts which were withdrawn from the Panos Trading LLC accounts which exceeded the amounts owed to Claimants after allocation of the losses noted above.

Therefore, Respondents, in their First Amended and Restated Counterclaim have requested: (i) the motion to dismiss be granted;<sup>1</sup> (ii) that Claimants be ordered to return withdrawals from the firm made to them in excess of what is owed to them by Panos Trading LLC after taking into account the authorized allocation of losses by Panos Trading LLC to them and after taking into account their indemnification of Panos Trading LLC for such losses in the amount of at least \$675,000; (iii) Claimants be ordered to prove that they have settled with all associates and former associates of Panos Trading LLC and thereby made their (Claimants') promises good as to matters involving all compensation, bonus or other remuneration due to all former Panos Trading LLC associates, so that it is clear that Panos has no responsibility to such parties, or, in the alternative, that Panos be released from any responsibility for such matters; (iv) all of Respondents' costs and fees, including attorney fees, incurred in defense of this matter and; (v) all other just and equitable relief as the Panel shall determine be awarded to Respondents.

On or about June 17, 2011, Claimants submitted an Answer to the First Amended and Restated Counterclaim denying that (i) any of the various written agreements entered into, between or among some of the parties at various times negate the claims asserted by Claimants in their Statement of Claim or give rise to any claims by Respondents against Claimants; (ii) the oral agreements and understandings upon which their claims against Respondents are based are unenforceable or otherwise negated by the June 2006 Agreement; and (iii) each and every allegation in the Counterclaim of wrongdoing or breach of any agreement by Claimants. Claimants further deny that (i) they breached any agreements that they had with Respondents; that they violated any risk parameters or rules of Panos Trading LLC; and/or (ii) they received or kept any amounts from Respondents in excess of the amounts to which they were due. Claimants deny Respondents assertions and conclusions concerning the interpretation, force and effect of the various excerpts of contractual language or provisions cited by the Respondents and that Claimants owe, rather than are owed, money.

### **Award<sup>2</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. Claimants' request for compensatory damages is GRANTED, in part, against Respondent Panos Trading LLC, in the total amount of \$1,295,001, for amounts due and owing under the agreement.
2. Claimants' requests for interest and further relief are DENIED.

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<sup>1</sup> The Panel issued an Order denying Respondents' motion to dismiss on June 22, 2011.

<sup>2</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.

3. Respondents' requests for damages, declaratory relief, costs and fees is DENIED.

### Forum Fees

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

Initial Filing Fee – Claim	\$1,500
Initial Filing Fee – Counterclaim	\$250
Pre-hearing session Fees (5)	\$2,500
Hearing session Fees (8 x \$1,500)	<u>\$12,000</u>
Total	\$16,250

1. Responsibility for the Initial Filing Fees, totaling \$1,750, shall be assessed as follows: Claimants shall be responsible for \$875 and Respondents shall be responsible for \$875.
2. Responsibility for the forum fees, totaling \$14,500, shall be assessed as follows: Claimants shall be responsible for \$7,000 and Respondents shall be responsible for \$7,500.
3. The Exchange shall retain the non-refundable filing fees and the hearing session deposits submitted by Claimants. Claimants initially submitted \$1,500 for the filing fee and \$1,500 for the hearing deposit. Claimants shall submit \$4,875 to the Chicago Board Options Exchange, Incorporated.
4. The Exchange shall retain the non-refundable filing fees and the hearing session deposits submitted by Respondents. Respondents initially submitted \$250 for the filing fee and \$600 for the hearing deposit. Respondents shall submit \$7525 to the Chicago Board Options Exchange, Incorporated.

/s/ Stephen P. Donahue  
Stephen P. Donahue, Chairman and Industry Arbitrator

November 9, 2011  
Date

/s/ Henry Choi  
Henry Choi, Industry Arbitrator

November 10, 2011  
Date

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

November 10, 2011  
Date